

Initial Assessment Decision Notice

Complaint Reference: NDC01/24

Complainant: Councillor Tony Vickers

Subject Member: Councillor Ross Mackinnon

On 25 January 2024, the Deputy Monitoring Officer, Nicola Thomas, and Independent Person of this Authority, Alan Penrith, considered a complaint from Councillor Tony Vickers concerning the alleged conduct of Councillor Ross Mackinnon, a Member of West Berkshire Council.

Brief summary of the complaint is set out below:

- That Councillor Mackinnon disclosed information he had received in error via e-mail, that was of a confidential/sensitive nature, at the Extraordinary Council meeting of 19 December 2023, to the press and on social media.
- Councillor Mackinnon received the information twice. On 26 May 2023, he highlighted to Councillor Vickers that he had received the e-mail in error and that he would delete it. Councillor Mackinnon also received the e-mail on 31 May 2023 but did not communicate the fact or give any agreement to delete it.
- Councillor Mackinnon contests that the information received was not of a confidential or exempt nature. He acknowledges that he did share the information as described. Councillor Mackinnon felt there was a clear public interest in the disclosure of the information.

Potential breaches of the Code of Conduct identified

The following potential breaches of the Code of Conduct were discussed:

Nolan Principles:

- Honesty and Integrity
- Leadership

General Obligations:

Councillors and Co-Opted Members **must not:**

Disclose information given to them in confidence or information acquired by them which they believe or are aware is of a confidential nature except where:

- (i) they have the consent of a person authorised to give it;
- (ii) they are required to do so by law;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice;
- (iv) the disclosure is reasonable and in the public interest;
- (v) the disclosure is made in good faith and in compliance with the reasonable requirements of the Council or its professional advisers.

Decision

In accordance with the Localism Act 2011, following the initial assessment the Deputy Monitoring Officer, in consultation with the Independent Person, is able to decide on one of the following four outcomes:

1. The complaint will be investigated fully by an independent investigator;
2. No further action will be taken on your complaint;
3. Some form of informal resolution will be sought;
4. The matter will be referred to the Director of Public Prosecution or the Police where it is suspected that some form of criminal conduct has occurred in relation to interests that have not been disclosed.

The Deputy Monitoring Officer in consultation with the Independent Person has concluded that in this case:

- Some form of informal resolution will be sought – a public apology from the Subject Member to the Complainant at the Extraordinary Council meeting on 20 February 2024, and in writing. Councillor Mackinnon is requested to draft his letter of apology by 15 February 2024. This will need to be approved by the Deputy Monitoring Officer before being sent to the Complainant.

The Panel reserves the right to have the matter investigated fully by an independent investigator if the apology is not forthcoming.

The Panel did not consider it appropriate for the Subject Member to determine in isolation that the information was in the public interest. There was no consultation with either the Monitoring Officer or Deputy Monitoring Officer prior to the action being taken. The requirement to do so is outlined in the Local Government Association (LGA) Model Code of Conduct.

The LGA Model Code of Conduct also made clear that for a disclosure to be considered in the public interest it needed to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening or is likely to happen in the future:

- A criminal offence is committed.
- Your local authority or some other person fails to comply with any legal obligation to which they are subject.
- A miscarriage of justice occurs.
- The health or safety of any individual is in danger.
- The environment is likely to be damaged.
- That information tending to show any matter falling within the above is deliberately concealed.

The Panel did not consider that the information disclosed fell into any of the above criteria.

The Panel did not consider that the disclosure was made in good faith, rather it was made for political reasons. The Subject Member was aware that the email was not intended for him and further, that it contained sensitive information. The Subject Member indicated his intention to delete the original email. Whilst the further disclosure by the Complainant may have been ill advised, it did not amount to consent for the information to be made public. The disclosure took place in May 2023 and at no point

was there a Monitoring Officer discussion on the seriousness of the issue felt by the Subject Member for the disclosure being considered as reasonable and in the public interest.

In considering the complaint the Deputy Monitoring Officer in consultation with the Independent Person had regard to the Council's Code of Conduct, the information submitted by the Complainant, and the response submitted by the Subject Member.

What happens now?

This Decision Notice is sent to the Complainant, and the Subject Member about which the complaint was made.

No Further Action

The Localism Act does not provide any appeals mechanism to review this decision. However the decision may be reviewed by means of an application to the High Court for Judicial Review of the decision.

Additional Help

If you need additional support in relation to this or future contact with us, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010.

We can also help if English is not your first language.

West Berkshire Council is committed to promoting and demonstrating fairness and equality of opportunity. We will ensure that no one is treated less fairly on the grounds of age, disability, gender, gender identity, marriage/civil partnership, pregnancy/maternity, race, religion/ belief, sexual orientation, or on any other grounds, as set out in legislation, which cannot be justified.

If you require this information in a different format, such as audio tape, or in another language, please ask an English speaker to contact Stephen Chard on Telephone 01635 519462, who will be able to help.

Signed

Date: 31 January 2024

Deputy Monitoring Officer Nicola Thomas

Signed

Date: 31 January 2024

Independent Person Alan Penrith