

Written Decision of West Berkshire Council's Advisory Panel

Date of the Advisory Panel:	25 June 2024
Reference Number:	NDC01/24
Member who this Decision relates to:	Councillor Ross Mackinnon
Person who made the original allegation:	Councillor Tony Vickers
Authority:	West Berkshire Council
Chair of the Advisory Panel:	Mike Wall (Independent Person)
Other Members of the Advisory Panel:	Lindsey Appleton (Independent Person), Councillors Jane Langford, David Marsh and Geoff Mayes
Apologies:	Councillors Carlyne Culver and Joanne Stewart
Declarations of Interest:	Councillor Langford declared a personal interest in the item by virtue of the fact that the Subject Member was her political group Leader (Conservative Group). As her interest was personal and not prejudicial she was permitted to take part in the debate.
Monitoring Officer:	Nicola Thomas (Deputy)
Investigator:	Richard Lingard
Clerk of the Advisory Panel:	Stephen Chard
Date Decision Issued:	4 July 2024

Summary of the Original Complaint

It was alleged 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.

Outcome of the Initial Assessment

The complaint which was received on the 2 January 2024 was initially assessed on 25 January 2024 by the Deputy Monitoring Officer and Independent Person (Alan Penrith) of West Berkshire Council.

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.

They concluded that in this case a public apology would be requested from the Subject Member to the Complainant at the Extraordinary Council meeting on 20 February 2024, and in writing.

However, as the apology was not forthcoming, the matter has been fully investigated by an independent investigator.

Conclusion of the Independent Investigator

Mr Richard Lingard was appointed to undertake the investigation on behalf of the Monitoring Officer. He considered the same information made available at the Initial Assessment stage and interviewed the following people as part of the investigation:

- Councillor Tony Vickers (Complainant)
- Councillor Ross Mackinnon (Subject Member)

Mr Lingard's draft report was shared with the Subject Member and the Complainant, and further comments were invited. These comments were incorporated into the final report.

In summary, Mr Lingard's findings are as follows:

He is satisfied that regardless of the inadvertence of the disclosure of the contents of Cllr Vickers' email, its contents were, were intended to be, and should have remained confidential. Cllr Mackinnon demonstrated by his response to the first transmission that he knew this very well.

Cllr Mackinnon should not have disclosed what Cllr Vickers said and in doing so breached the obligations as to confidentiality enshrined in the West Berkshire Council Code of Conduct.

Decision of the Advisory Panel

A summary of the Advisory Panel's discussions is provided below to aid the Governance Committee's deliberations:

The majority of the Panel concurred with the findings of the Investigator that there had been a breach of the West Berkshire Council Code of Conduct. There was one abstention from the vote.

The majority of the Panel considered that the Subject Member released the information with the knowledge that it would be damaging to the Complainant and used it to gain an unfair advantage.

A Panel member held the view that the information in the e-mails was not clearly confidential. It was not marked as such and was not a Part II report. Additionally, the e-mail had been sent in error on two occasions.

The Panel did not identify any areas of the Investigator's report that required further clarification.

The Advisory Panel recommended that the following people be invited to attend the Governance and Ethics Committee where the matter will be determined:

1. Investigator
2. Complainant
3. Subject Member
4. Monitoring Officer

The Advisory Panel did not make any recommendations of sanctions should the Governance Committee concur with the finding that a breach of the Code of Conduct has occurred.

Right to Appeal

Under the revised Localism Act 2011 there is no appeals mechanism in place. Parties may challenge the decision by way of Judicial Review in the High Court. Parties are advised to seek independent legal advice prior to pursuing this option.