



# South Bucks District Council

## Non- Executive Delegated Decisions Made by Officers

Regulation 7 of the Openness of Local Government Bodies Regulations 2014 requires a written record to be produced as soon as reasonably practicable after an Officer has made a decision under delegation. This means that in order to comply with these new requirements, Officers discharging delegated powers which would otherwise have been taken by the relevant local government body, or a committee, sub-committee of that body or a joint committee in which that body participates, but it has been delegated to an officer of that body either under a specific express authorisation; or under a general authorisation to officers to a) grant a permission or licence; b) affect the rights of an individual or c) award a contract or incur expenditure which in either case materially affects the Council's financial position must complete the form below.

1. **Name and role of officer:** Anna Dell, Deputy Monitoring Officer
2. **Date of decision:** 4<sup>th</sup> April 2019
3. **Summary of the decision:**

The Deputy Monitoring Officer received a complaint in January 2019 concerning the alleged conduct of Councillor Paul Kelly of South Bucks District Council. In accordance with the Council's Complaints Procedure Councillor Kelly was invited to comment on the complaint. The response received from Councillor Kelly was passed to the Complainant who remained dissatisfied and considered that it did not adequately address their concerns. The complainant therefore asked for the complaint to be considered under Stage 2 of the Procedure.

At stage 2 the Deputy Monitoring Officer considers whether the complaint should be referred for investigation or whether no further action is warranted taking into account the following criteria set out in the Council's Complaints Procedure:-

- The complaint appears to be vexatious, malicious, politically motivated, relatively minor, insufficiently serious, tit-for-tat, or there are other reasons why an investigation may not be in the public interest.
- The same, or substantially similar, complaint has already been the subject of assessment or investigation and there is nothing more to be gained by further action being taken.
- It appears that the complaint concerns or is really about dissatisfaction with a Council decision or policy rather than a breach of the Code of Conduct.
- There is not enough information currently available to justify a decision to refer the matter for investigation.
- The complaint is about someone who has died, resigned, is seriously ill or is no longer a Member of the Council concerned and therefore it is not in the public interest to pursue.
- Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter and it is considered in the public interest that it be investigated.
- Where the event/s or incident/s took place more than 6 months prior to the date of complaint being received or where those involved are unlikely to remember the event/s or incident/s clearly enough to provide credible evidence.
- The complaint is such that it is unlikely that an investigation will be able to

come to a firm conclusion on the matter and where independent evidence is likely to be difficult or impossible to obtain.

- If it is considered that the subject Member has offered a satisfactory remedy to the complainant (for example by apologising) or the complaint is capable of other informal resolution such as mediation and the Member complained of is amenable to such approach.
- If it is satisfied that having regard to the nature of the complaint and the level of its potential seriousness, the public interest in conducting an investigation does not justify the cost of such an investigation.
- Where the allegation discloses a potential breach of the Code of Conduct but it is considered that the complaint is not serious enough to warrant any further action and:
  - the Member and Officer resource needed to investigate and determine the complaint is wholly disproportionate to the matter complained about; or
  - in all the circumstances there is no overriding public benefit or interest in carrying out an investigation

Having carefully considered the details of the complaint, the response from Councillor Kelly, the referral criteria set out above and the views of the Council's Independent Person, the Deputy Monitoring Officer decided in consultation with the Chairman of the Audit and Standards Committee, that the complaint should not be referred for investigation because having regard to the nature of the complaint and the level of its potential seriousness, the public interest in conducting an investigation did not justify the cost of such an investigation.

#### **4. Reasons for the decision:**

##### **Background to the Complaint.**

The Complainant alleged that Councillor Kelly having sat on the Resources PAG on 25<sup>th</sup> September 2018 and given advice to the Portfolio Holder regarding the business case for the multi-storey car park in Station Road, Gerrard's Cross he should have declared a Prejudicial Interest under the Code of Conduct and not taken part in the consideration of the Cabinet decision dated 17<sup>th</sup> October 2018 when this decision was scrutinised by the Overview & Scrutiny Committee (Extraordinary Meeting) on 8<sup>th</sup> November 2018. That when Councillor Kelly sat on the Overview & Scrutiny Committee there was also a real possibility that he was biased.

##### **Reasons for the Decision.**

1. Councillor Kelly has been an elected member of the Council since May 2010 and a member of the Resources PAG ("PAG") since May 2018 having previously been a member of this PAG between July 2012 and May 2015. Councillor Kelly has also been a member of the Overview & Scrutiny Committee ("O&S Committee") since May 2018.
2. The Complainant alleged that having advised the PAG Portfolio Holder at the PAG on 25<sup>th</sup> September 2018 Councillor Kelly should have declared a personal and prejudicial Interest when the Decision of Cabinet dated 17<sup>th</sup> October 2018 was called in to the O&S Committee on 8<sup>th</sup> November 2018 and not taken part in that meeting and that he was biased.
3. In their complaint form, the Complainant stated that despite Councillor Kelly's prior involvement in the matter (due to the advice he provided to the Portfolio Holder at the PAG meeting on 25<sup>th</sup> September 2018), he formed part of the O&S Committee tasked with scrutinising the Cabinet decision of 17<sup>th</sup> October 2018. He did not declare any interest or recuse himself. The Complainant also stated that the Portfolio Holder's recommendation was in accordance with the PAG's majority view.

4. In response to those comments Councillor Kelly confirmed that this was not his recollection of the PAG meeting as there was no voting at the PAG meeting. Councillor Kelly confirmed that he gave the Portfolio Holder no advice but he did take part in the discussion. That the recommendation to Cabinet was the Portfolio Holder's to make as the PAG was not a decision-making body. It was a forum for discussion and to inform the Portfolio Holder's recommendation and whilst Members expressed differing views no vote took place.
5. Councillor Kelly asked the Complainant if they would be willing to provide further information on where their comments about what took place at the PAG meeting came from because the PAG meeting was a private meeting and any discussion was confidential. The Deputy Monitoring Officer noted that the Complainant in their email dated 4<sup>th</sup> March 2019 explained that the information in their complaint was taken directly from the published minutes of the meetings of the PAG on 25<sup>th</sup> September 2018 (and the O&S Committee meeting on 8<sup>th</sup> November 2018).
6. However, the PAG meeting on 25<sup>th</sup> September 2018 was a private meeting and not open to the public and only the reports and minutes of the meeting were publically available. The Deputy Monitoring Officer noted that whilst the Minute recorded that three Members expressed support for the recommendation and two Members expressed concerns it was not recorded what individual Members involvement was nor what advice if any was given by them to the Portfolio Holder.
7. Under the Code of Conduct it is members' responsibility to declare any interests regarding items on the Agenda when asked by the Chairman or when the interest becomes apparent. The Deputy Monitoring Officer noted that the declaration of Interests was listed as Item 3 on the O&S Committee Agenda. The Minute of the O&S Meeting confirmed that a concern was raised by a Member who had called-in the Cabinet decision that some members should declare an interest as members of the Planning Committee that considered the planning application relating to the proposed development. A similar concern was also raised regarding one of the members of the O&S Committee having previously been a Portfolio Holder responsible for the project. The Deputy Monitoring Officer noted that legal advice was sought and given and that no interests arose.
8. The Deputy Monitoring Officer also noted from the Minutes that no concerns were raised at the O&S Committee meeting about potential interests of members of the PAG including Councillor Kelly who were also members of the O&S Committee.
9. The Complainant stated that it was clear from the Code of Conduct that although the Constitution requires each PAG to contain at least one member of the O&S Committee, the need to ensure fairness (and the appearance of fairness) meant that if a matter on which the relevant PAG advised came before the O&S Committee, any member present when the PAG advice was given was deemed to have a prejudicial interest such that they should recuse themselves from the O&S Committee for the purposes of that matter.
10. However the Code of Conduct at Part 8 when referring to prejudicial interests does not include "advice" - it refers to a decision or action taken by the Cabinet, PAG's or another of the Councils Committees, Sub-Committees, Joint Committees or Joint Sub-Committees. PAG's are not a decision making body and it is ambiguous as to what is meant by actions. Meetings of the PAGs are held to seek Members views in order to inform the Portfolio Holder recommendations to Cabinet.

11. The Deputy Monitoring Officer noted that Councillor Kelly confirmed that no decision or action was taken by the PAG on 25<sup>th</sup> September 2018 and therefore he did not consider that he should have declared an interest when attending the O&S Committee. That the Portfolio Holder did not make any decision and only made a recommendation to Cabinet for Cabinet to consider.
  12. The Complainant also alleged that in view of Councillor Kelly's prior involvement that he was biased. The Deputy Monitoring Officer noted that Councillor Kelly confirmed that when sitting on the O&S Committee he did consider the call-in reasons on their merits, having thoroughly read and considered the Cabinet report and appendices. Councillor Kelly also confirmed that he had listened to the representations made at O&S Committee meeting. That ultimately, he was not convinced by the arguments for reconsideration of the decision made by Cabinet.
  13. The Deputy Monitoring Officer found no evidence to support the allegation that Councillor Kelly was biased and pre-determined and therefore should have not taken part in the O&S Committee meeting when the Cabinet Decision was scrutinised or that there was a potential breach of the Code of Conduct.
  14. The Deputy Monitoring Officer considered that the complaint was not sufficiently serious to investigate and was satisfied that there was no public benefit from an investigation which would be unlikely to bring to light any further evidence in addition to what Councillor Kelly had provided in his reply and in the absence of any further evidence from the Complainant as to where they obtained the information referred to in their complaint form.
  15. However the Deputy Monitoring Officer considered that Part 8 of the Code of Conduct could be ambiguous in that it refers to decisions and actions taken by PAG's. When looking at the Local Authorities (Model Code of Conduct) England) Order 2001 (2001 No. 3575) the Model Code of Conduct does not refer to PAG's only Committees, Sub-Committees, Joint Committees or Joint Sub-Committees which are decision making bodies. Reference to PAGs was added to the Council's Code of Conduct when it was adopted in 2012. However, PAG's are not a decision making body and it is ambiguous as to what is meant by actions. A PAG is consulted in order to give advice and/or views to Portfolio Holders to inform the Portfolio Holder's recommendations to Cabinet.
  16. Therefore the Deputy Monitoring Officer her would be recommending that the Audit and Scrutiny Committee review this part of the Code to make it clearer when Members have an interest to declare.
5. **When making the decision did the officer take into account information from another report?** Yes  No  The background papers for this decision are exempt information under paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972.
6. **Details of any alternative options considered and rejected by the officer when making the decision:** The option of referring the complaint for investigation under Stage 2 of the Complaints Procedure was considered but having regard to the criteria adopted by the Council and for the reasons stated at paragraph 4 above the Deputy Monitoring Officer considered that having regard to the nature of the complaint and the level of its potential seriousness, the public interest in conducting an investigation did not justify the cost of such an investigation.
7. (a) **Details of any conflict of interests declared by any Member who was consulted regarding the decision:** No conflicts of interest.
- (b) **Note of dispensation:** Not applicable.

Classification: OFFICIAL

Does this notice contain any exempt information? Yes  (if yes, select reasons below) No

- 1. Identifies individuals (names, addresses, contact information etc.)
- 2. Likely to reveal the identity of an individual
- 3. Financial or business affairs of any person or organisation
- 4. Consultations or negotiations in connection with any labour relations
- 5. Legal professional privilege that could be used in legal proceedings
- 6. Any enactment (prosecution) to a person or organisation
- 7. Any action taken to do with prevention/investigation/prosecution of crime

Date Notice Published: 10.4.2019.

Classification: OFFICIAL