

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint about the Council's code of conduct complaint process. This is because there is insufficient evidence of fault by the Council, and the Ombudsman cannot achieve the outcomes the complainant is seeking.

The complaint

1. The complainant, whom I refer to as Ms B, says the Council's procedure for dealing with complaints about councillors is unsatisfactory, because it does not allow the Council to remove councillors from their position.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - we cannot achieve the outcome someone wants.

(Local Government Act 1974, section 24A(6), as amended)
3. And the Ombudsman cannot investigate parish councillors. But we can look at how the District Council investigates a complaint about a parish councillor acting in their capacity as a councillor.
4. In that regard, we cannot question whether the District Council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. *(Local Government Act 1974, section 34(3), as amended)*
5. So, the Ombudsman does not offer a right of appeal against a council's decision on complaints that a parish councillor has breached the code of conduct. But we can consider if there was fault in the way the Council considered the complaint.
6. Finally, it is for the Council to decide the details of its code of conduct and the arrangements for dealing with complaints about member conduct. It is not the Ombudsman's role to dictate what should be contained within such procedures.

How I considered this complaint

7. I have considered:

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- Ms B's complaint to the Ombudsman;
 - The Council's 25 January 2019 letter to Ms B;
 - Information from the Council about Ms B's complaints;
 - An extract from the Council's arrangements for dealing with code of conduct allegations;
 - Ms B's comments on a draft version of this statement.

What I found

Administrative background

8. The Council's arrangements for considering code of conduct complaints says:

"It is also important to note that not every complaint that the Code has been broken will be referred for investigation. For example:-

- *If the complaint covers allegations that may be caught by criminal law eg assault*

If the Council decides not to refer your complaint for investigation, we will give you the reasons for this decision.

The Monitoring Officer may request further information from either the Complainant, the Subject Member or any other persons the Monitoring Officer considers appropriate before reaching a decision whether a matter should be referred for investigation."

What happened

9. Ms B says she was upset by the way a parish councillor spoke to her, and that the councillor has spread lies about her to other residents. Ms B wanted the District Council to remove the councillor from the Parish Council. She thinks the District Council's arrangements for dealing with such matters are not fit for purpose, because it has no powers to impose sanctions on councillors.
10. The Council says the complaint it received from Ms B made allegations of a criminal attack by the councillor. It therefore decided not to put the matter through its code of conduct complaint process, because it felt this was a matter for the Police to investigate, and says it advised Ms B of this. The Council also explained that since the Localism Act 2011, it has no power to impose sanctions such as the disqualification from office of parish councillors.

Assessment

11. I appreciate Ms B is unhappy the Council decided not to pursue her complaint, and that it does not have the power to remove councillors from their roles.
12. But it is for the Council, not the Ombudsman, to decide the content of the Council's code of conduct complaints policy. And the Ombudsman cannot question the merits of the Council's decision on Ms B's complaint, unless there is evidence of administrative fault in the way it was made.
13. The Council has confirmed to me that its Monitoring Officer was involved in reaching the decision not to refer Ms B's complaint for investigation. I also note the Council has explained the reasons for its decision to Ms B.

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14. The Council therefore appears to have followed its complaint procedure, so I find there is insufficient evidence of fault to warrant the Ombudsman pursuing the matter.
 15. Furthermore, the Ombudsman also has no power to recommend removal of the councillor from the Parish Council, or to demand that the Council incorporate such a sanction into its code of conduct complaint policy. As we cannot achieve the outcomes Ms B is seeking, I do not consider we should investigate her complaint for this reason also.

Final decision

16. The Ombudsman will not investigate Ms B's complaint. This is because there is insufficient evidence of fault by the Council, and we cannot achieve the outcomes Ms B is seeking.

Investigator's decision on behalf of the Ombudsman