

WARWICK DISTRICT COUNCIL

REPORT

Report of an investigation

pursuant to arrangements made under section 28(6) of the Localism Act 2011
by Peter Oliver (Senior Solicitor, Warwickshire County Council)
appointed by the Monitoring Officer of Warwick District Council
into allegations concerning Councillor Mrs Linda Bromley,
a member of Warwick District Council.

Date: 16 September 2013

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1. Executive Summary

1.1 The complainant, Lydia Turpin, alleges that Councillor Mrs Bromley failed to adhere to the provisions of the Code of Conduct relating to objectivity, honesty and accountability in relation to her actions, including the manner in which she questioned the complainant, during the consideration of a grant application by the Jackie Turpin Amateur Boxing Club by the Warwick Community Forum at its Planning Meeting on 7th June 2012 and its full meeting on 4th October 2012. I was appointed by Andrew Jones, the Monitoring officer of Warwick District council to investigate that complaint.

1.2 I interviewed the complainant, Bernadette Allen, Councillor Mrs Grainger, PS Kettle, PC McMurray and Councillor Mrs Bromley. I have also seen and considered various other papers relevant to the complaint.

1.3 I find that in relation to the questioning of the complainant at the meeting on 4th October, Councillor Mrs Bromley failed to adhere to the provision of the Code of Conduct which requires that a Councillor should always treat people with respect. I find that other matters referred to do not constitute a failure to adhere to the provisions of the Code.

2. Councillor Mrs Bromley's official details

2.1 Councillor Mrs Bromley was elected to Warwick District Council on 22nd July 2010, and was re-elected in May 2011, as a member for Warwick South ward. During that time she has been a member of various committees, and she is also a member of the Warwick Community Forum.

2.2 Councillor Mrs Bromley signed the Declaration of Acceptance of Office following her election and her re-election in 2011. She originally signed an Undertaking to observe the Code of Conduct for Members of WDC, but has not signed an acknowledgement that she had received and understood the new code of Conduct for WDC following its adoption at the end of June 2012.

2.3 Councillor Mrs Bromley has told me that she had training on the old (pre July 2012) Code of Conduct (although she cannot remember when this was), and that she was familiar with it as she previously worked for a solicitor who investigated code of conduct complaints. She was not present when the

Monitoring Officer of WDC led a training session for members on the new Code in June 2012.

3. The relevant legislation

3.1 Section 27 (2) of the Localism Act 2011 requires an authority to adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. Section 28 of the Act sets out the principles with which a code must comply, and requires that it must contain provisions dealing with pecuniary and other interests. Warwick District Council adopted a Code of Conduct ("the Code of Conduct") which complied with those principles and requirements on 27th June 2012, to have effect from 1st July 2012.

3.2 The Code of Conduct contains the following provisions which are relevant to this complaint:

Part A – General Obligations

As a member or co-opted member of Warwick District Council, I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

I recognise that this Code of Conduct will apply at all times when I am acting as a member of Warwick District Council and I recognise that failure to adhere to this Code could result in the issuing of sanctions against me.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority:

.....

OBJECTIVITY: *In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.*

ACCOUNTABILITY: *Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.*

.....

HONESTY: *Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.*

.....

As a Member of Warwick District Council, my conduct will in particular address the principles of the Code of Conduct by:

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- *Recognising that all parties are equal and my position is one of privilege and not one that should be used to secure advantage or disadvantage for any party*
- *Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.*
- *Listening to and respecting the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective, making decisions on merit and providing reasons for the decisions taken.*
.....
- *Always treating people with respect, including the organisations and public I engage with and those I work alongside, both officers and fellow Members.*
.....
- *Never intimidating or attempting to intimidate, or bully any person*
.....

4. The complaint

- 4.1 The Complainant, Miss Lydia Turpin alleges that Councillor Mrs Bromley breached the Code of Conduct by her actions (i) at a meeting of the Warwick Community Forum Planning Group on 7th June 2012 as a result of which a bid for grant funding by Jackie Turpin Amateur Boxing Club ("the Boxing Club") was deferred; and (ii) at a meeting of the Warwick Community Forum on 4th October 2012 by the way in which she (Councillor Mrs Bromley) questioned her (Lydia Turpin) about the application for grant funding by the Boxing Club.
- 4.2 Miss Turpin alleges that by these actions Councillor Mrs Bromley breached the requirements for Objectivity, Accountability and Honesty in the Code of Conduct.

4.3 On 24th January 2013, Andrew Jones, the Monitoring Officer, appointed me to carry out the investigation on his behalf.

5. The evidence gathered

- 5.1 In addition to the initial complaint, I have interviewed and taken statements from the complainant Miss Lydia Turpin, Bernadette Allen, Councillor Mrs Moira-Ann Grainger, Police Sergeant David Kettle, and Police Constable Trent McMurray. The statements signed by all these people are contained in Appendix A to this report and are not repeated here.
- 5.2 I also interviewed Councillor Mrs Bromley (who was accompanied by her solicitor, Mr Hathaway). Following that interview, I prepared a draft statement from what she had said to me which I sent (at her request to Mr Hathaway) for her approval and signature. For reasons of which I am not aware, and despite two reminders, no amendments or signed statement have been returned to me. This report is therefore based on the draft statement which I prepared. As the statement is not signed, I regard the evidence in it as carrying less weight than had it been signed.
- 5.3 I have also seen and considered various papers relating to meetings of the Community Forum and the Community Forum Planning Group, and the grant applications (and accompanying documents) submitted on behalf of the Boxing Club.
- 5.4 A draft of this report was sent to the complainant and to Councillor Mrs Bromley (again through her solicitor) to enable them to comment on it before the report was finalised. I received a letter and some further evidence from the complainant as a result of which I have made a number of amendments to the text, but not to my findings.
- 5.5 I have not received any acknowledgement of the draft report, nor any comments thereon, from, or on behalf of, Councillor Mrs Bromley. I do not know the reason for this, but coupled with her failure to amend or sign the draft statement it appears to show a lack of respect for my role in investigating this matter.

6. Summary of the material facts

- 6.1 The complaint relates to an application by the Boxing Club for a grant from the Warwick Community Forum. That club is a successor to the Warwick Racing Amateur Boxing Club ("WRABC"). WRABC was founded by the complainant's grandfather and met for many years at the premises of Racing Club Warwick (a local football club). The complainant was an official of WRABC for a number of years.
- 6.2 During 2011 various disputes arose between WRABC and Racing Club Warwick, including about the payment of rent and the electricity supply to the building used by WRABC. As a result, at Easter 2012, WRABC vacated the premises at Racing Club Warwick. The club established themselves at new premises at Warwick Racecourse, changed their name to the Jackie Turpin Amateur Boxing Club and adopted a new constitution. The complainant is the Secretary and Treasurer of the Boxing Club.
- 6.3 An application dated 5th May 2012 was made on behalf of the Boxing Club under the name of the then Secretary, Andrew Lambert, (although the complainant says that she actually completed the form) for a grant from the Community Forum. (At the club's AGM on 12th May 2012 Andrew Lambert ceased to be Secretary and the complainant took over that post). The amount of grant applied for was £1840 for various items of boxing equipment.
- 6.4 The process for considering grant applications is that they are first scrutinised by a Community Forum Planning meeting held in advance of the full Community Forum meeting. The Planning meeting vets the various applications which have been received against agreed criteria which reflect the Forum's agreed priorities, to decide whether the application should go forward to the full Forum meeting for decision.
- 6.5 The application from the Boxing Club was considered by the Planning Group meeting on 7th June 2012. Councillor Mrs Bromley was not present at that meeting and her apologies are recorded in the notes of the meeting. Because the Boxing Club was a new club, the Planning meeting decided to defer the application for details of the club's governance arrangements to be provided.
- 6.6 Following discussions with Bernadette Allen about the requirements, the complainant submitted a new application on 11th September 2012 accompanied by copies of the club's constitution, accounts and qualifications

and CRB checks of the coaches. The application was for a sum of £2,870. Ms Allen, as the officer responsible, was satisfied that the new bid fulfilled the requirements of the previous meeting in terms of the supporting information required.

- 6.7 The new application was to be considered at the Planning Group meeting on 25th September. Bernadette Allen circulated details of the bids to members of the Planning Group (including Councillor Mrs Bromley) in advance of the meeting. That was the first that Councillor Mrs Bromley knew of the new application.
- 6.8 Councillor Mrs Bromley had continuing concerns about the governance of the Boxing Club. These are set out in her draft statement. She raised these concerns at the Planning Group meeting and said that further checks should be made about the governance and running of the club. The Chairman (Councillor Mrs Grainger) advised her that the club had complied with all the Planning Group's previous requests, and by a majority, the Planning Group agreed that the bid should be recommended (on a reduced basis) to the Community Forum.
- 6.9 The Community Forum met on 4th October 2012. Councillor Mrs Bromley was present. When the meeting reached the consideration of the bid by the Boxing Club, Lydia Turpin made a short presentation setting out what the bid was about, the positive impact it would have on the community and how much the bid was for.
- 6.10 She was then questioned about the bid by two or three people. The questioners included Councillor Mrs Bromley and a member of the public (identified as Andy Cowlard). Mr Cowlard is Vice-Chairman of Racing Club Warwick. Councillor Mrs Bromley and Andy Cowlard were sitting together at the meeting and were seen talking together before the meeting. Councillor Mrs Bromley says they did not discuss the Boxing Club bid. As it is not relevant to the matters which I have to consider, I make no finding as to whether the questioning by these two people was in any way co-ordinated or pre-planned.
- 6.11 I am satisfied that some of the manner and content of the questioning of Lydia Turpin was inappropriate for a meeting of this nature. This is based on the evidence of a number of those present at the meeting. The Chairman,

Councillor Mrs Grainger, describes Councillor Mrs Bromley's questioning of Lydia as "quite aggressive went on too long and went far beyond what we normally put a grant applicant through....I think a lot of those in the room felt uncomfortable with the questioning". She also says that with hindsight she should have stopped the questioning earlier. Bernadette Allen (the WDC officer who organises the Community Forum and takes the notes of the meeting) felt that the questioning was "aggressive and negative and uncomfortable to witness". Sergeant Kettle describes the questioning as "relevant but done in an unsympathetic way. People are not normally questioned in that way at these meetings, and Lydia seemed a bit flustered". P.C. McMurray says that he cannot remember anyone being questioned at Forum meetings in the way that Lydia was. He felt that whilst the questions were legitimate, they were asked in a manner which related more to a court room than a Forum meeting. Lydia describes herself as feeling distraught, embarrassed and humiliated.

- 6.12 The Community Forum subsequently approved the award of a reduced grant to the Boxing Club, as recommended by the Planning Group.

7 Reasoning as to whether there has been failure to adhere to the Code of Conduct

- 7.1 The first question I have to consider is whether Councillor Mrs Bromley was subject to the Code of Conduct whilst considering this grant application at the Forum Planning meeting on 25th September and the Forum Meeting itself on 4th October. The Code applies at all times when "[she is] acting as a member of Warwick District Council". Councillor Mrs Bromley was a member of the Forum and the Planning Group as a result of being a Councillor. I am therefore satisfied that at these two meetings she was acting as a Councillor and was subject to the Code.
- 7.2 The question which then falls to be considered is whether Councillor Mrs Bromley has failed to adhere to any of the provisions of the Code. The provisions of the Code to which the complaint refers are the following principles:

Objectivity: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit

Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office

Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public

The Code commits Councillors to behave in a manner which is consistent with them.

7.3 As the complaint did not make reference to any of the modes of conduct by which Councillors are in particular required to address the principles of the Code, I sought guidance from the Monitoring Officer as to whether my remit was restricted to the three general obligations identified by the complainant or whether I was able to consider whether the evidence showed breaches of any of the particular modes of conduct referred to in the Code. His reply was:

"As you know, Councillors have an obligation to act in accordance with all elements of the Code whilst in the role of a Councillor. If your investigation reveals that this has not happened and that the matter(s) relate to the incident/issue raised by the complainant, you do not need to confine yourself to the specific breaches raised by the complainant"

7.4 I consider that there is evidence and/or allegations which require me to consider whether Councillor Mrs Bromley failed to adhere to the following paragraphs of the Code

- *Recognising that all parties are equal and my position is one of privilege and not one that should be used to secure advantage or disadvantage for any party*
- *Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member of this authority*
- *Listening to and respecting the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective, making decisions on merit and providing reasons for the decisions taken*
- *Always treating people with respect, including the organisations and public I engage with and those I work alongside, both officers and fellow Members*
- *Never intimidating or attempting to intimidate, or bully any person.*

I will consider the three principles and the five modes of conduct in turn.

- 7.5 Essentially, the principle of objectivity requires that Councillors should make choices on merit. That requires Councillors to consider all the evidence and arguments and reach a judgement on them. It is of the nature of democracy that different councillors will reach different conclusions on the same facts and arguments. Simply because a councillor does not reach the same decision as a fellow councillor cannot lead to a conclusion that they have failed to make the choice on merit. Where a Councillor has a closed mind to an argument, so as to amount to predetermination in a legal sense, then it may be said that a councillor failed to make a choice on merit. Predetermination is a difficult matter to prove and the government has recently legislated to make it clear that the fact that a Councillor has previously expressed views on a matter does not necessarily amount to predetermination¹. Whilst there may be a suspicion that Councillor Mrs Bromley had a fixed view on this matter which would not be altered by any amount of argument, the evidence in my view is not sufficiently strong to make such a finding. I therefore conclude that Councillor Mrs Bromley did not fail to adhere to this provision of the Code.
- 7.6 The principle of accountability requires that Councillors must submit themselves to appropriate scrutiny. Scrutiny of actions can take several forms, of which this investigation is one. There is no evidence that Councillor Mrs Bromley has failed to be accountable for her decisions and actions or to submit herself to scrutiny. I find that she has not failed to adhere to this provision of the Code.
- 7.7 The principle relating to honesty requires councillors to declare private interests and to take steps to resolve conflicts of interest. There is no evidence that Councillor Mrs Bromley had any private interests which related to or affected her consideration of the grant application by the Boxing Club. In particular, there is no evidence that she had any interest in, or was connected in any way with, Racing Club Warwick at the time of the consideration of the grant application.
- 7.8 In her response to my draft report the complainant drew my attention to the minutes of the WDC Overview and Scrutiny committee meeting of 28th

¹ Localism Act 2011 s.25

September 2010, at which Councillor Mrs Bromley declared an interest as a member of Racing Club Warwick, and asked me to find that the councillor had a connection with the club. In making that comment, the complainant had not seen Councillor Mrs Bromley's draft statement, in which she explains (at paragraph 6) that she had been a member of the Management Committee of the club for a short period as a representative of Warwick Town Council. That involvement ceased in 2011. I find that Councillor Mrs Bromley did not fail to adhere to this provision of the Code.

- 7.9 The first of the modes of conduct which I consider relevant to this investigation requires that a Councillor's position should not be used to secure advantage or disadvantage for any party. It must be recognised that any decision on a matter such as an application for a grant, licence or permit will result in an advantage to the applicant if the application is approved and possible disadvantage if it is refused. In my opinion, a councillor would only breach this provision if his or her primary intention in the decision making process was to secure the advantage or disadvantage rather than to make a decision on the merits of the case. To that extent, it is not dissimilar to the requirements of the principle of Objectivity (see paragraph 7.5 above). There is no evidence that Councillor Mrs Bromley's primary intention was to disadvantage the Boxing Club rather than to test the application against what she thought were the Council's practices and to ascertain what monies the club had already received. I therefore find that Councillor Mrs Bromley did not fail to adhere to this requirement of the Code
- 7.10 The next requirement of the Code is similar to the principle of Honesty in that it requires that a councillor should not compromise his or her position by being under obligation to third parties who might seek to influence the performance of his or her duties. For the reasons given in paragraph 7.7 above, I find that there is no evidence that Councillor Mrs Bromley was under obligation to any outside party which influenced the way she performed her duties in this case, and thus I find that she did not fail to adhere to this requirement of the Code.
- 7.11 The third of the modes of conduct which I have identified as relevant in this investigation is similar to the principle of Objectivity, and for the reasons given in paragraph 7.5 above, I find that Councillor Mrs Bromley did not fail to adhere to this requirement of the Code.

- 7.12 The fourth of the modes of conduct which I consider relevant requires that Councillors should treat people with respect. All of the people I interviewed (with the obvious exception of Councillor Mrs Bromley herself) were critical in one way or another of her questioning of Lydia Turpin. The details of those criticisms are in the witness statements and are summarised in paragraph 6.11 above. The criticism relates mainly to the manner of the questioning, rather than the content of the questions. I consider that Councillor Mrs Bromley had no concern for the effect which her questions, and more importantly the manner in which they were put, had on the complainant, Lydia Turpin. To that extent, I find that she failed to treat Ms Turpin with respect and therefore failed to adhere to this requirement of the Code.
- 7.13 The final requirement of the Code relevant to this investigation is that a Councillor should not intimidate, attempt to intimidate, or bully any person. The prohibition on bullying was previously part of the old National Code of Conduct and bullying was defined by Standards for England as
- “offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim’s confidence, capability and health. Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs. It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying.”*
- 7.14 This definition includes intimidating behaviour, and the provisions of the present code are therefore somewhat tautologous. As far as I am aware, intimidation was not defined by Standards for England, but a dictionary definition of intimidate² is to frighten or scare.
- 7.15 In her statement, Lydia Turpin describes her feelings after the Community Forum meeting as distraught, embarrassed and humiliated. The elements of bullying were therefore present in Councillor Mrs Bromley’s conduct, whether or not intentionally. However, I would regard this as a ‘minor isolated incident’, and do not therefore regard this as having breached the requirements of the Code. Had the conduct been repeated, or formed part of a pattern, I might well have formed a different view.

² Collins English Dictionary

- 7.16 That leaves me to consider whether the Councillor Mrs Bromley's conduct was intimidating towards Lydia Turpin. In her statement, Ms Turpin does not describe herself as being frightened or scared. Furthermore, in my opinion intimidation requires an element of intention on the part of the perpetrator. Whilst I believe that Councillor Mrs Bromley had a very strong view (for reasons which I have not been able to ascertain) that the Boxing Club should not get this grant, and was acting forcibly (in verbal as opposed to physical terms) to try to get her way, I do not believe that it was her intention to frighten or scare Ms Turpin. Rather, I believe that those whose minds she was trying to affect were those who would vote on the grant application.
- 7.17 In her response to my draft report, the complainant draws my attention to other definitions³ of the word 'intimidate'. The first such definition refers to 'threats, blackmail or coercion' which I do not believe were present in this case. The second one refers to 'frighten someone or make someone in awe of you, especially if you do so in order to get what you want'. The final definition is 'to cause to become timid or afraid, esp. by means of threats'.
- 7.18 In her letter of 22nd August, Ms Turpin sets out quite forcefully her view that Councillor Mrs Bromley's conduct towards her at the meeting on 4th October 2012 fulfilled the definitions of bullying and intimidation. Whilst I respect the force of her feelings, I cannot agree with her submission. In my view, the common theme of the various definitions is that the purpose of the bullying or intimidation is for the person carrying out the bullying or intimidation to get something from the person being bullied or intimidated as a result of that behaviour. This was not the case here, as what Councillor Mrs Bromley was trying (unsuccessfully as it turned out) to achieve was to get the committee to refuse the grant.
- 7.19 For all these reasons, I find that Councillor Mrs Bromley did not fail to adhere to the provisions of the code which prohibits intimidation or bullying.

8 Findings

- 8.1 I find that, for the reasons set out in paragraph 7.12, Councillor Mrs Bromley failed to adhere to the provision of WDC's Code of Conduct which requires that a Councillor should always treat people with respect.

³ See the attachments to Lydia Turpin's letter of 22nd August 2013 at Appendix XX

8.2 There are other matters set out in the report which I find do not amount to a failure to adhere to the provisions of the Code.

Peter J R Oliver
Senior Solicitor
Warwickshire County Council

16 September 2013