

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint about
Teignbridge District Council
(reference number: 21 004 645)**

21 December 2022

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Report summary

Corporate and other services – Standards Committee

Councillor Daws says the Council was at fault as it failed to follow due process when investigating him for alleged breaches of its code of conduct for elected councillors.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

To remedy this complaint the Council should take the following action.

- Apologise to Councillor Daws, accepting the findings of this investigation.
- Rescind its decision notice of 22 July 2020 upholding the complaint Councillor Daws breached the Code of Conduct and ensure this is no longer available on its website. In its place it should provide a statement saying the notice has been withdrawn following this investigation and provide a link to this report.

The Council should also learn lessons from this complaint. It should ensure it has a written procedure for its officers and any independent investigators asked to consider standards complaints that should include:

- ensuring the Council has a record of complaints being made in writing;
- ensuring there is a clear written record of consultation with an Independent Person to include their response;
- recording that the written complaint has been shared with the Councillor complained of, or a clear written record as to the reasons why not;
- ensuring that where an investigation expands to consider further allegations arising during the investigation, it keeps a clear written record of that and a record that this has been explained to the Councillor complained about; and
- that in all appropriate cases it considers the rights of the councillor complained about to free expression under Article 10 of the Human Rights Act, as part of any investigation report and subsequent committee decision making.

The complaint

1. Councillor Daws says the Council was at fault as it failed to follow due process when investigating him for alleged breaches of its code of conduct for elected councillors. In particular he complained the Council:
 - initiated an investigation without receiving any complaint about his conduct which is contrary to the law and its own policy;
 - misled him into believing such a complaint had been made;
 - did not disclose details of any such complaint as might have been made; and
 - did not carry out due diligence of an independent investigator appointed to investigate the complaint.
2. Councillor Daws says because of the above he was unfairly sanctioned with damage to his personal and professional reputation. He says the Council's actions also breached his right to freedom of expression. He says he has also spent unnecessary time and trouble in responding to the investigation and then seeking redress.

Legal and administrative background

The Ombudsman's role and powers

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)
4. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
5. Our decisions do not normally mention the name of any person or include details likely to identify them. We can decide to use someone's name if it is in the public interest as well as that of the complainant to do so. In this case we have decided to name the complainant because we consider it is in his interest, and he has asked us to do so. (*Local Government Act 1974, section 30 (3)*)

Relevant law and Council policy

6. Chapter 7 of the Localism Act 2011 requires all local authorities to "*promote and maintain high standards of conduct*" by elected councillors. Councils must adopt codes of conduct for councillors as part of that requirement.
7. Section 28(6) of the Act requires local authorities to have in place "*arrangements*" for investigating "*allegations*" that councillors have breached the code.
8. Section 28(7) of the Act requires local authorities to "*include provision for the appointment by the authority of at least one independent person whose views are to be sought, and*
a) *taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate [...]*"

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9. Section 28(9) of the Act says that “*an allegation*” in sections 28(6) and 28(7) of the Act “*means a written allegation that a member or co-opted member of the authority has failed to comply with the authority’s code of conduct*”.
 10. The Council publishes its Code of Conduct (‘the Code’) on its website. Relevant extracts from the version in force in November 2019 are quoted later in this report.
 11. On its website the Council has a form that anyone wanting to complain about a councillor’s conduct can complete. Section 4 invites the person completing the form to explain what sections of the Code the councillor is alleged to have broken. It invites those completing the form to “*be specific*”; for example, “*instead of writing that the Member insulted you, you should state what it was they said*”. Those completing the form should also “*provide relevant background information*”.
 12. The form says at Section 5 that “*in the interests of fairness and natural justice we believe Members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint.*”
 13. The Council also publishes details of its procedure for investigating standards complaints (i.e. complaints that councillors have breached the Code). It says complaints should be submitted to its Monitoring Officer, who has the statutory responsibility for administering investigations into complaints about councillor conduct.
 14. The procedure says: “*the Monitoring Officer will review every complaint received, and after consultation with the Independent Person, take a decision on whether it merits formal investigation*”.
 15. The procedure explains that where the Monitoring Officer or the Standards Committee considers a complaint merits a formal investigation then it will appoint an Investigating Officer. This may be an external investigator. It says that “*normally*” the Investigating Officer will write to the councillor complained about and provide them with a copy of the complaint and ask them to provide their explanation for events.
 16. The Investigating Officer must produce a report which is first circulated for comment as a draft. The final report must take account of any comments made on the draft version. The case can then proceed to a hearing at the Standards Committee which can decide if there has been a breach of the Code and if so, decide what sanction to apply.

Human Rights Act

17. The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to. The Act requires all local authorities to respect and protect individuals’ rights.
18. Not all rights operate in the same way. Instead, they break down into three separate categories:
 - absolute rights: those which cannot be interfered with under any circumstances;
 - limited rights: those that can be interfered with in certain circumstances; and
 - qualified rights: those rights where interference may be justified to protect the rights of others or wider public interest.

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19. Our remit does not extend to making decisions on whether a body in jurisdiction has breached the Human Rights Act – this can only be done by the courts. But we can make decisions about whether a body in jurisdiction has had due regard to an individual’s human rights in their treatment of them, as part of our consideration of a complaint.
20. Of relevance to this complaint is Article 10 of the Human Rights Act which protects freedom of expression. This aims to ensure people can give their views and opinions. However, it is a qualified right, which means there are circumstances where the freedom can be curtailed so long as that is lawful, necessary and proportionate.
21. Court judgments have considered the interplay between regimes that aim to protect standards in public life through local authority code of conduct schemes with elected representatives’ right to free expression. The courts have recognised that elected politicians have an enhanced right of protection to free expression. But where an elected politician makes a critical comment about a non-elected official, it is legitimate to consider the requirement to protect that official. However, this must be weighed:
- first, against the interest of open discussion of matters of public concern; and
 - second, where the comment is made by a politician as a political expression, the enhanced protection given to his right of freedom of expression. (*see Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)*)
22. A breach of Article 10 rights can occur if a councillor is found to have breached a code of conduct and been asked to apologise, even when subject to no formal investigation. (*see Robinson, R (on the application of) v Buckinghamshire Council [2021] EWHC 2014 Admin*)

How we considered this complaint

23. Before issuing this report we considered:
- Councillor Daws’ written complaint to us and any supporting information he provided;
 - correspondence between Councillor Daws and the Council about the matters covered by the complaint, which pre-dated our investigation;
 - information provided by the Council in reply to our enquiries; and
 - any relevant law, procedure or guidance as referred to in this report.
24. Councillor Daws and the Council also had opportunity to comment on a confidential draft of the report. Any comments they made, or further evidence they provided, was taken into account before we finalised the report.

What happened – key events

25. Councillor Daws was elected to the Council in 2019. He stood for a group known as ‘Newton Says No’ (NSN). This political grouping had its origins in campaigning against proposed housing development in part of the Council’s area (the ‘NA3’ area). Councillor Daws was one of three councillors elected as part of the NSN group. Another was ‘Councillor X’.
26. On 1 November 2019 Councillor Daws and Councillor X received an email from the Council’s Monitoring Officer. It said: “*significant concerns have been raised*

with me by officers and / or members about your conduct towards them particularly in recent weeks. The conduct appears on the face of it to establish a case for investigation into whether the standards of conduct required of councillors, as set out in the Members' Code of Conduct, have been breached. I list the relevant provisions of the Code below:

- *Para 4.1 – requirement to behave in such a way that a reasonable person would regard as respectful*
- *Para 4.2 – requirement not to act in a way which a reasonable person would regard as bullying or intimidatory*
- *Para 4.7 – requirement not to bring the office of councillor or the Council into disrepute”.*

27. The email cited three matters:

- *“Councillor Daws behaviour in connection with his desire for members of the public to attend a Members’ briefing on Climate Change on 24 September 2019;*
- *Comments directed to officers at / in response to the above, a subsequent, [planning] workshop meeting held on 3 October 2019 and more generally their advice on NA3 development / appeal issues, including comments which were made on social media by Cllr [X] ”*
- *Comments directed to Cllr Mr and Mrs Cllr [Y] in response to their support of officers and / or more generally”.*

28. The email went on to offer an explanation about why the Council did not open the climate change briefing to members of the public. The Monitoring Officer then suggested meeting with both councillors to *“discuss the above, including the investigations process and how, if it all, it may be possible for you to reasonably resolve at least some of the above concerns”*. On 3 November Councillor Daws and Councillor X rejected the invitation of a meeting with the Council Monitoring Officer.

29. On 1 November, the Council Monitoring Officer had also sent an email to an external consultancy firm whose services include carrying out investigations into alleged breaches of local authority code of conduct schemes. In that email the officer said the Council had not received any formal complaint about either Councillor. But said she had received concerns from Councillors Mr and Mrs Y about comments made on social media. The same email said Councillor Daws had been disrespectful to the Council Managing Director on 24 September 2019. The officer reported that Councillor Daws *“would not accept”* that members of the public could not attend the climate change briefing and had told the Managing Director he was *“on thin ice”*. The email continued: *“Whilst this in itself may not be seen as a breach of the code of conduct given the seniority of the officer, within the context of what have been very personalised comments which have specifically been directed for some months on social media by Cllr [X]/ residents’ association, there is potential for this to be in breach of the Council’s Code of Conduct”*.

30. On 7 November the Monitoring Officer sent an email to one of the independent persons retained to sit on the Council's Standards Committee. They enclosed a copy of the email of 1 November to Councillor Daws and Councillor X. The covering email said the Council had *“provisionally contacted”* the consultancy

about investigating and enclosed a copy of that email also. There is no record the Independent Person replied.

31. On 11 November the Council Monitoring Officer received an email from a senior planning officer, which referred to a conversation they had *“a couple of weeks ago”*. The email raised the following matters.
 - That Councillor Daws had used a side entrance to let members of the public into the planning workshop. They described this as the second security breach involving Councillor Daws doing this.
 - That Councillor X had put offensive posts on social media.
 - That Councillor Daws had sent an email on 21 October 2019 which contained a negative comment on local planning policy documents which they considered contained disrespectful language.
 - That Councillor Daws had sent an email on 19 June 2019 to the Council Managing Director as part of an exchange of emails where Councillor Daws had challenged figures used by the Council in its 2012 local plan. Councillor Daws said in his email: *“the actions taken to defend them and implement them without addressing reasoned concerns are in our view tantamount to ‘Misfeasance in public office’”*.
 - That the actions of Councillor Daws and Councillor X were having a stressful effect on the officer and the team; reducing their enjoyment in the job and causing sleeplessness and low morale.
 - That NSN had a website which targeted officers and contained derogatory comments about them.
32. On 13 November the Council contacted various officers and councillors arranging interviews with the Investigator employed by the consultancy firm, which it retained to carry out the investigation. It also told Councillor Daws it had appointed the Investigator. It said the Investigator would contact him to arrange a meeting *“in connection with the conduct issues from the three incidents to which I have referred”*.
33. In separate correspondence, on 15 November, Councillor Daws asked the Investigator to send him *“full details of each complaint made, including specific actions, times, dates together with details of who raised the complaint”*. In reply the Investigator told Councillor Daws that his remit was to investigate the matters raised by the Monitoring Officer in their email of 1 November. Although he also said he had been given the *“timeline of events”* set out in the 11 November email and this was attached. The Investigator noted this mentioned two specific social media posts by Councillor X and the email sent by Councillor Daws on 21 October 2019. The Investigator said he would be carrying out interviews to ascertain more detail about these incidents.
34. Councillor Daws asked again if he could see complaints made in writing, to which the Investigator replied that he had *“provided all the details I have at this stage”*.
35. On 3 December the Council contacted Councillor Daws and Councillor X to set up interviews.
36. Before agreeing to an interview Councillor Daws questioned if he had seen all information relevant to the complaint. He was told by the Council Monitoring Officer *“please be assured you have all the relevant information there is to date and to which you are properly entitled”*.

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37. On 17 December 2019 Councillor Daws met with the Investigator. The Investigator's record of that interview says the interview covered:
- Councillor Daws familiarity with the Code of Conduct;
 - discussion over the NSN website and its content;
 - discussion over why Councillor Daws had used the phrase "*tantamount to misfeasance in a public office*" in the email of 19 June 2019; Councillor Daws said he used the phrase as he disputed the statistical accuracy of figures used by the Council in the local plan;
 - events on 24 September 2019 including a subsequent social media post. Councillor Daws explained he went to the Managing Director's office as he did not know the reasons why the public were excluded from the climate change briefing. He said he had used the phrase "*skating on thin ice*" as he did not consider barring members of the public from attending the briefing was lawful. He had later posted on his Councillor Facebook page that the "*management of TDC was out of control*" as it had given "*no good reason*" for not allowing members of the public into the briefing. Councillor Daws explained he had tried to get an explanation for why the briefing was not open to members of the public before 24 September 2019 but had not been given one; and
 - when members of the public had been admitted to the Council building by Councillor Daws.
38. On 25 January 2020 the Investigator sent Councillor Daws a copy of a draft of his report. He asked for any comments by 4 February 2020. Councillor Daws did not comment on the draft.
39. On 4 March 2020 the Council sent Councillor Daws a copy of the final report. It said that it would be discussed at a Standards Committee meeting in April. But because of the COVID-19 pandemic that was postponed and rearranged for July 2020.
40. The Investigating Officer's report contains a summary of the email sent to Councillor Daws and Councillor X on 1 November 2019. In a later section headed 'findings of fact' the Officer discusses matters raised in the email of 11 November 2019.
41. The Investigator made findings in respect of five matters.
- Any involvement Councillor Daws had with the NSN website did not breach the Code.
 - Councillor Daws' email of 21 October 2019 did not breach the Code as it made a general criticism of the Council and not individual officers; it was not considered disrespectful.
 - Councillor Daws' email of 19 June 2019 did breach the Code because it constituted a serious allegation against a senior officer.
 - Councillor Daws' conduct in his meeting with the Managing Director on 24 September was disrespectful and intimidatory; a finding which encompassed not only his comment the Managing Director was 'skating on thin ice' but also his conduct in the meeting.
 - The social media post made later that day also breached the Code as it was disrespectful to the Council management team.

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42. The Investigator's report appended most of his interview notes including that with Councillor Daws referenced above. The Investigator had also interviewed Councillors Mr and Mrs Y as part of their investigation. The interview recorded the Councillors saying they had concerns about the conduct of Councillor Daws and Councillor X. But the only examples they gave of behaviour thought unacceptable were about the actions of Councillor X.
43. Councillor Daws made submissions in advance of the meeting including that:
- no complaint about his conduct had been disclosed or shared with him;
 - no due diligence was carried out on the Investigator who conducted the investigation;
 - the report produced by the Investigator failed to distinguish between his actions and those of Councillor X;
 - the investigation was politically motivated and a smear campaign; and
 - the Council had not complied with his requests for information.
44. At the beginning of the Standards Committee meeting Councillor Daws tried to raise the matter of how the investigation had been conducted, saying no complaint had been made about him. The committee curtailed discussion of this item.
45. On 22 July 2020 the Standards Committee gave its findings. It found Councillor Daws had:
- breached section 4.1 of the Code (the requirement to behave in such a way that a reasonable person would regard as respectful) when he sent his email to the Managing Director on 19 June 2019;
 - breached sections 4.1 and 4.7 of the Code (bringing his office into disrepute) in his conduct with the Managing Director on 24 September 2019; and
 - breached section 4.1 of the Code with the content of his social media post on 24 September 2019.
46. The Committee gave its reasons for these findings. It noted that Councillor Daws had not acknowledged any breach of the Code nor apologised for his actions. It resolved that it should put its decision notice in the public domain and said Councillor Daws should provide an unequivocal letter of apology to those officers the Committee found he was disrespectful to.
47. In October 2020 Councillor Daws sent an email to the Council Monitoring Officer, Managing Director and the Chair of the Standards Committee saying he had been subject to an unlawful investigation procedure.
48. The Council Managing Director replied saying the Council regarded the investigation as concluded and did not comment on the procedure followed. A further email from Councillor Daws met with a similar reply.
49. Subsequently, in December 2020, solicitors wrote to the Council on behalf of Councillor Daws. They invited the Council to review its decision citing among other matters that:
- at no time during the investigation had the Council given Councillor Daws details of any complaint made against him or given him a copy of the same;

- the response to information requests made by Councillor Daws showed that no complaint he had breached the Code of Conduct was ever made against him; and
 - the investigation against Councillor Daws suffered from being ‘cross-pollinated’ with the complaint against Councillor X.
50. The Council sent a short reply saying Councillor Daws had been *“fully aware of the circumstances that gave rise to the need for an investigation”*.
51. During our investigation the Council has said *“it is apparent that no formal complaint was received with regards to the conduct of Councillor Daws”*. But that its Monitoring Officer did receive *“written complaints/concerns/ allegations”* about Councillor Daws which they *“considered”* were *“written allegations”*. The Council has suggested it would be *“perverse”* if its Monitoring Officer had to require a *“written complaint”* if aware of inappropriate conduct. It has suggested that the full records of the complaints received by the Monitoring Officer may have been lost due to the passage of time.

Findings

General approach to investigation

52. Before addressing the specific facts of this case, we will explain our approach to investigating complaints of this type.
53. We can investigate complaints from locally elected councillors where they allege they have suffered a personal injustice because of actions taken by a body in our jurisdiction. This is because where a councillor makes a complaint of this type, they are not doing so on behalf of the council or another public body, but in their own personal capacity. They are also not an employee, governed by a personnel relationship with a council, where there are legal limits on what we can investigate.
54. There is nothing specific in the legislation that sets out our powers (the 1974 Local Government Act) which prevents us investigating complaints about the procedures used by local authorities to investigate complaints alleging breaches of local codes of conduct. That said, we are not an appeal body. This means we do not take a second look at a decision to decide if it was wrong. Instead, we look at the procedure an organisation followed to make its decision.
55. In doing so, we do not take an overly forensic view of reports prepared on behalf of councils by independent investigators. We would not for example criticise a minor error in the facts recorded in such a report, unless it appeared that error had a significant bearing on the report’s findings.
56. Nor will we comment on all that might be said at a standards committee hearing. In such meetings we expect statements will often be made that might be disputed by complainants and others, but which form part of the ‘ebb and flow’ of debate. We would only criticise the conduct of such a hearing if we considered it seriously flawed. We will rely primarily on the written decision recorded by the standards committee in understanding how it reached its findings.

Findings in this case

57. We find there were a series of faults in the Council’s processes, that led Councillor Daws to become the subject of an investigation into whether he had breached the Council’s Code of Conduct. There were also faults in how that investigation subsequently unfolded. However, we do not propose to uphold that

part of the complaint which questions the suitability of the Investigator the Council appointed. While we do not have full details of the process the Council went through before making that appointment, we do not find any reason to criticise it. The Investigator worked for a consultancy specialising in such investigations and clearly had experience in that field.

58. Turning to where we have found fault, we find first the Council initiated an investigation without a complaint in writing. We can understand the Council may want some procedure to address conduct if aware of a potential breach by a councillor that has not resulted in a written allegation. But the wording of the law is clear. The Localism Act 2011 says to trigger any investigation of an alleged breach the Council must receive details of that allegation in writing. There was no written complaint about Councillor Daws having breached the Code on 1 November 2019.
59. The Council has suggested this finding is wrong because it may have received complaints in writing, subsequently lost. On the balance of probabilities, we do not think this likely. First, because the Council Monitoring Officer referred at the outset to having received 'no formal complaint' against Councillor Daws which suggests nothing was put in writing to her. Second, because Councillor Daws went to lengths to question if he had seen the complaints made against him. He received assurance from both the Investigator and Monitoring Officer that he had seen all relevant documents. They did not suggest they were withholding documents they believed should not be shared with Councillor Daws. So, this too suggests there was no complaint in writing in existence in November or December 2019.
60. The second fault lies in the Council's email of 1 November 2019 which notified Councillor Daws of a 'complaint'. It did not provide enough information about alleged breaches of the Code. It did not specify:
- what allegations had been made about Councillor Daws' behaviour in connection with his desire to open a Members' briefing on climate change to the public;
 - what comments were made further to that briefing; nor where they were made; nor by whom; which were considered a potential breach of the Code;
 - whether any comments at the planning workshop allegedly giving rise to a potential breach of the Code originated from Councillor Daws or from Councillor X; and
 - who made any comments directed to Councillors Mr and Mrs Y that were to be the subject of an investigation; it did not say what those comments were and why they were considered to potentially breach the Code.
61. This led to the third fault, which was that from the outset the Council conflated allegations against Councillor Daws with those against Councillor X. We note that of the three matters referred to as the subject of investigation on 1 November, only one referred directly to Councillor Daws - that of his conduct on 24 September 2019. The other allegations did not say whether the conduct under investigation was his or that of Councillor X. But it has subsequently become clear there were never any allegations Councillor Daws breached the Code in relation to the meeting on 3 October 2019. Nor did Councillors Mr and Mrs Y ever make a specific allegation Councillor Daws breached the Code. In their interview with the Investigator, the only examples given of behaviour they thought breached the

Code referred to the actions of Councillor X, not Councillor Daws. This conflation suggests a lack of objectivity in officers' consideration of Councillor Daws' actions.

62. The fourth fault was the Council does not have full records of its consultation with the Independent Person. The Council commits to only begin such investigations after consultation, so these are significant records that it should keep. But there is no complete record of that consultation – only what the Monitoring Officer sent to the Independent Person, which as we have already noted was flawed. It is not recorded if the Independent Person replied, nor what their reply said. Nor is it recorded when the Council initiated the investigation by hiring the consultancy firm and if this pre-dated the completion of this consultation exercise.
63. The fifth fault was in how the Council then introduced new allegations into its investigation. An investigation into a breach of a code of conduct can consider new evidence that arises during the investigation. In this case we note the email sent by the Planning Officer of 11 November 2019 introduced new allegations about Councillor Daws. It said he gave members of the public unauthorised access to buildings; complained about the content of emails he sent to officers in June and October 2019 and complained about the NSN website.
64. We recognise Councillor Daws received a copy of these allegations before his meeting with the Investigator. But the Investigator did not make clear whether all the content of the email of 11 November was now part of his investigation, or only the reference to Councillor Daws email of October 2019. We also note the Investigator had earlier said his investigation was only concerned with the three matters mentioned in the email of 1 November 2019. At the time of his meeting with the Investigator therefore, the scope of the investigation being conducted into Councillor Daws' actions was unclear.
65. The Council's complaint form which can be used for reporting alleged breaches of the Code and its procedure make clear that it considers it part of natural justice that a Councillor accused of breaking the Code knows what it is they are accused of. We endorse this principle. This is so they have chance to answer those allegations before they have any meeting with the Investigator. But it was never made clear to Councillor Daws that the investigation had expanded to cover the full content of matters raised in the 11 November 2019 email. Nor which of the matters raised in that email were considered to potentially breach the Code and why. As an illustration of the confusion caused, we note that much time and energy was expended in the investigation looking at the allegation Councillor Daws allowed unauthorised access to Council buildings. This continued at the subsequent committee hearing. But that matter never formed the basis of an alleged breach of the Code by Councillor Daws.
66. The sixth fault is in how the Council reacted when Councillor Daws tried to raise legitimate questions about the procedure the Council had followed. Neither officers nor councillors involved in administering the procedure for complaints about breaches of the Code paused to consider if due process had been followed. Nor what consequences a failure to follow due process might have for Councillor Daws. This fault was present from the outset and continued through to the committee hearing of the case and when Councillor Daws raised a complaint subsequently.
67. As we indicated above we do not propose to dwell on the detail of the Investigator's report or the discussion of it that followed at committee. However, significantly, a seventh fault is present in both. Because neither addressed the implications of their findings in interfering with Councillor Daws' Article 10 rights.

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68. We consider these rights were engaged. Except for Councillor Daws' presentation or demeanour in his meeting with the Managing Director, every other matter where he was considered to have broken the Code related to statements he made either in person or by email. There were three instances. First, the "*misfeasance*" comment; second the "*skating on thin ice*" comment and third the "*out of control*" comment. In each case Councillor Daws advanced a defence for his choice of language. To summarise, he considered these were his political views or opinions. They amounted to no more than robust criticism, in his view, of decisions taken by the Council when it approved its local plan and when it chose to exclude members of the public from the climate change briefing.
69. We set out in paragraph 21 the approach the courts have taken to similar cases. It is clear in this case the Council considered the need to protect its officers from critical comment by Councillor Daws. That was legitimate. But this need had to be balanced with consideration of whether Councillor Daws was engaging in discussion of matters of public concern and his enhanced right to freedom of expression. We reiterate that it is not our role to undertake that balancing exercise. But where a local councillor is sanctioned under a standards regime for statements that may fall within the realm of political comment we consider the investigation must consciously consider these factors. In Councillor Daws' case there is no evidence such a balancing exercise took place.

The injustice caused to Councillor Daws

70. We consider an investigation should never have begun against Councillor Daws on 1 November 2019. First, because there was no written complaint to base it on. Second, because even if a written complaint had been received about Councillor Daws conduct on 24 September 2019, we know it was the Monitoring Officer's judgment this was insufficient to justify investigation on its own.
71. We accept the email received on 11 November 2019 may have contained information to justify an investigation. But that email was inherently problematic, because it was used to reinforce a procedure which had already begun. There is no evidence available that the matters in that email which engaged with Councillor Daws conduct, all of which had occurred weeks or months earlier, generated a complaint he had breached the Code or were considered sufficient to justify an investigation at the time. So here also, there is doubt about whether an investigation should have begun.
72. Yet even if the Council could persuade us it was justified in opening an investigation into Councillor Daws' conduct, he was subject to a demonstrably unfair process. He was denied the opportunity to have the allegations against him investigated in isolation from those against Councillor X. Both the report compiled by the Investigator and the Standards Committee meeting conflated the allegations made against each. Councillor Daws was also not given due notice of all the allegations against him, nor chance to respond to all those allegations before his interview with the Investigator.
73. When taken individually, some of the consequences of these faults would not lead us to conclude the outcome to the investigation into Councillor Daws' conduct would have been different. But when put together, along with the failure to consider his Article 10 rights, we cannot say this was the case. The faults have cast such a shadow of uncertainty over the Standards Committee findings that those findings cannot be relied on.

Recommendations

74. It flows from our findings set out above that to remedy this complaint the Council should take the following action.
- Apologise to Councillor Daws, accepting the findings of this investigation.
 - Rescind its decision notice of 22 July 2020 upholding the complaint Councillor Daws breached the Code and ensure this is no longer available on its website. In its place it should provide a statement saying the notice has been withdrawn following this investigation and provide a link to this report.
75. The Council should also learn lessons from this complaint. It should ensure it has a written procedure for its officers and any independent investigators asked to consider standards complaints that should include:
- ensuring the Council has a record of complaints being made in writing;
 - ensuring there is a clear written record of consultation with an Independent Person to include their response;
 - recording that the written complaint has been shared with the councillor complained of, or a clear written record as to the reasons why not;
 - ensuring that where an investigation expands to consider further allegations arising during the investigation, it keeps a clear written record of that and a record that this has been explained to the councillor complained about; and
 - that in all appropriate cases it considers the rights of the councillor complained about to free expression under Article 10 of the Human Rights Act, as part of any investigation report and subsequent committee decision making.
76. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

77. We find fault by the Council causing injustice to Councillor Daws. We recommend the Council take the action described above to remedy that injustice.
78. We have published this report because we consider it in the public interest to do so, given the injustice caused to the complainant and the wider systemic problems the complaint has revealed.