

The Ombudsman's final decision

Summary: Ms X complains the Corporation has mishandled a complaint that was made against her. She says the Corporation had a biased and improper motive, unnecessarily delayed its investigation, and failed to provide her with an explanation for its decision. She says this caused her stress and outrage. We find fault with the Corporation's actions. We have made recommendations for the Council to remedy the injustice caused by the faults identified.

The complaint

1. Ms X complains the Corporation has mishandled a complaint that was made against her. She says the Corporation:
 - had a biased and improper motive;
 - unnecessarily delayed its investigation into the complaint;
 - failed to consider her human rights, specifically Article 10;
 - refused to provide her with any rationale or explanation for its decision; and
 - was not transparent in its reasons for asking for an apology.

Ms X says the Corporation's actions have caused her stress and outrage.

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 must also consider whether any fault has had an adverse impact on the person making the complaint. I 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*)
3. We cannot question whether a 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*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I spoke with Ms X and considered the information she provided.

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6. I made enquiries with the Corporation and considered the information it provided.
 7. I sent two draft decisions to Ms X and the Corporation and considered their comments.

What I found

Human Rights Act 1998

8. Article 10 protects a person's right to hold opinions and to express them freely without government interference. This includes the right to express the views aloud.
9. Although a person has freedom of expression, the person has a duty to behave responsibly and to respect other people's rights. Public authorities may restrict this right if they can show their action is lawful, necessary, and proportionate to:
 - protect national security, territorial integrity (the borders of the state) or public safety
 - prevent disorder or crime
 - protect health or morals
 - protect the rights and reputations of other people
 - prevent the disclosure of information received in confidence
 - maintain the authority and impartiality of judges

Member's Code of Conduct – complaints procedures

10. The Corporation has a policy which sets out how it will deal with complaints relating to the member code of conduct.
11. Paragraph 41 of the policy notes the Assessment Sub-Committee will make an initial assessment of each complaint received and will then do one of the following:
 - arrange a formal investigation of the complaint; or
 - arrange training, conciliation or other appropriate alternative steps; or
 - decide that no action should be taken in respect of the complaint.
12. Paragraph 42 highlights the suitability of "other action" is dependant on the nature of the complaint. Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way of resolving less serious matters. Examples include:
 - Arranging for the subject member and complainant to engage in a process of conciliation.
13. The Assessment Sub-Committee will normally complete its initial assessment of an allegation within 30 working days.
14. After the Assessment Sub-Committee has reached a decision, it will write to the complainant and the subject member to advise them of the outcome within 10 working days. The decision letter will include:
 - The main points of the matter considered.
 - The decision reached
 - Clear and concise reasons for the decision on whether to proceed.

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- Clear and consider reasons for the decision on how to proceed (if appropriate)
15. The Standards Committee will hear and determine any allegation that a member has failed, or may have failed, to comply with the code of conduct. The Standards Committee will conduct hearings through a Hearing Sub-Committee.

What happened

16. Ms X was a co-opted member of the Corporation's Standards Committee. The Corporation's Code of Conduct applied to both elected members and co-opted members.
17. In November 2019, a complaint was made against Ms X that she had breached the Code of Conduct due to comments she made during a Dispensations Sub-Committee meeting. The complainant had applied to the Sub-Committee for a dispensation to speak and vote on matters affecting their constituents in which they might have a pecuniary interest, provided such matters fell within a certain category. To explain her objection to granting the dispensation requested, Ms X used a hypothetical example, naming the complainant and their partner in the process.
18. The complainant alleged that Ms X's comments amount to a breach of the following provisions of the Code of Conduct:
- Always treating people with respect.
 - Not doing anything which could reasonably be regarded as bringing your office into disrepute.
19. In February 2020, the Assessment Sub-Committee met to consider the complaint against Ms X. The evidence suggests the Assessment Sub-Committee decided to defer the decision till the next meeting in April 2020. It did this to pursue consideration of "other action", as set out in paragraph 42 of the complaints policy.
20. The Assessment Sub-Committee emailed Ms X after the meeting to invite her to consider a short apology to the complainant.
21. Ms X declined the invitation to apologise and provided the Assessment Sub-Committee with her reasons for doing so.
22. Due to the COVID-19 pandemic, Corporation cancelled the April 2020 meeting. The Assessment Sub-Committee did not reconvene until September 2020. In this meeting, the Assessment Sub-Committee made its decision on the complaint.
23. There are no minutes or records outlining the considerations of the Sub-Committee before it made its decision. The minutes only note the Sub-Committee deliberated in private.
24. The Assessment Sub-Committee wrote to Ms X within 10 working days to tell her of its decision. It concluded the following:
- With regards to the allegation she brought her office or authority into disrepute by expressing a view at the Dispensation Sub-Committee meeting that was wrong, this allegation would not give rise to a breach of the Code of Conduct.
 - With regards to the allegation she had brought her office or authority into disrepute, and failed to treat people with respect, due to her remark in which she named the complainant at the Dispensation Sub-Committee meeting, there was potentially a breach of the Code of Conduct.

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25. The Assessment Sub-Committee also considered it was not in the public interest or a good use of resources to take any further action. It said it was unlikely, given the nature of the complaint and response, that an investigation into whether a breach had occurred, would produce further material findings.
26. The letter also expressed the Assessment Sub-Committee's disappointment that Ms X failed to offer an apology to the complainant.

Analysis

27. I do not consider there is any fault in the Corporation considering the complaint made against Ms X. This is because it is clear a complaint was made against her which the Corporation was obliged to consider.
28. However, there is a lack of evidence outlining the Assessment Sub-Committee's decision making in relation to the complaint made against Ms X. This is because the Assessment Sub-Committee did not record its considerations of the complaint. It has merely recorded that it made its deliberations in private.
29. The Corporation's policy notes it could have decided to withhold publication and disclosure of minutes of the discussion to the public. However, this does not mean the Corporation did not have to record its decision making in relation to the complaint against Ms X. Failure to record is fault.
30. I consider the fault identified has caused some uncertainty. This is because there is doubt as to whether the Assessment Sub-Committee properly considered the complaint and made its decision properly.
31. I also consider, at this stage, there has been fault with the process taken by the Assessment Sub-Committee. The evidence suggests it tried to take "other action" before reaching a decision on the complaint. This is not in line with the Corporation's complaints policy. The policy clearly outlines that an initial assessment must be made first before the Sub-Committee can act. This includes arranging conciliation.
32. If the Assessment Sub-Committee wanted to defer the decision, it could have done so. However, it should not have asked Ms X to apologise in the meantime. Therefore, the Assessment Sub-Committee was at fault for asking Ms X to apologise before it had actually made its assessment on the complaint.
33. Further, the Corporation should be able to demonstrate why it decided to ask Ms X to take conciliatory action without asking the complainant to do the same. Without a clear rationale of how this decision was reached, there is uncertainty about whether the decision was made properly.
34. I consider the fault identified above caused Ms X distress and upset. This is because she was asked to apologise without a clear explanation as to why. Without a rationale for the decision, doubt is also cast over whether this was an appropriate request. Further, when Ms X refused the invitation to apologise, the Assessment Sub-Committee commented on this in its final decision letter in a manner which suggests Ms X was being difficult or uncooperative. This would have compounded Ms X's distress and upset.
35. The deviation from policy above also likely led to delays in the Assessment Sub-Committee making its decision. It should have made its decision within 30 working days, in line with the complaints policy. However, it did not make its decision until September 2020, nearly 10 months after the complaint was first made. I recognise the COVID-19 pandemic likely impacted and contributed to this delay. However, I consider that it is likely, on balance, that if the Assessment Sub-

Committee had not deviated from the policy, it would have made its decision on the complaint during the February 2020 meeting.

36. I consider the above fault caused Ms X an injustice. This is because she was caused time and trouble and distress in having to wait for a decision on the complaint.

Biased and improper motive

37. Ms X says the Corporation had a bias and improper motive for considering the complaint made against her.
38. There is clear evidence a complaint was made against Ms X and this was a complaint the Corporation was obliged to consider under its policy. As noted earlier, I am satisfied there was no fault in the Corporations decision to consider the complaint made against Ms X.
39. Therefore, I do not find any evidence to support Ms X's view the Corporation had a bias and improper motive for considering the complaint.
40. In response to our amended draft decision, Ms X clarified her complaint about bias and improper motive is about the decision of the Assessment Sub-Committee to pursue the complaint. She says the Assessment Sub-Committee should have dismissed the complaint after assessing it as there was clearly no breach of the Code of Conduct. She says this is why she feels the Corporation had a biased and improper motive.
41. I do not consider I am able to make a finding, even on balance, that the Assessment Sub-Committee should have dismissed the complaint after considering it. As noted above, there was fault with the Corporation for failing to keep records of its decision making and rationale for why it asked Ms X to take conciliatory action. However, I do not consider that, if not for this fault, the Assessment Sub-Committee would have dismissed the complaint. There is uncertainty about what decision the Assessment Sub-Committee would have made if it had properly considered the complaint.
42. Therefore, I remain satisfied there is no evidence to support Ms X's view the Corporation had a biased and improper motive for pursuing the complaint.

Article 10, Human Rights Act 1998

43. Ms X says the Corporation breached Article 10 of the 1998 Act. It is not for the Ombudsman to reach a view of whether the Corporation has breached Ms X's human rights. This is a matter only the courts can decide.
44. However, we can consider whether the Corporation has given due regard to her right to freedom of expression.
45. The law stipulates a person has the right to hold opinions and to express them freely without government interference. In this case, there is no evidence of any interference from the Corporation to prevent Ms X from holding and expressing her opinions during the Disputations Sub-Committee meeting.
46. The law also notes that although a person has freedom of expression, the person has a duty to behave responsibly and to respect other people's rights. Therefore, this is a qualified right. A qualified right means the state can legally interfere with the right in certain situations, such as to protect the rights of others.
47. While we accept the Corporation was obliged to investigate the complaint, the Corporation should be able to evidence its consideration of Ms X's Article 10

rights during its investigation into the complaint, either as an implicit or explicit part of its decision-making process.

48. However, as established above, the Corporation has no records of its decision making. Therefore, there is no evidence to suggest the Corporation did give due regard to Ms X's Article 10 rights when it considered the complaint. This is fault.
49. The fault identified has caused Ms X some uncertainty. This is because I cannot say what the Corporation's decision would have been if it had properly considered the complaint and made its decision properly.

Agreed action

50. To remedy the injustice caused by the faults identified, the Corporation has agreed to complete the following:
- Apologise to Ms X for the injustice caused by the faults identified.
 - Pay Ms X £300 to recognise the distress, outrage, and time and trouble caused by the faults identified.
 - Notify all Assessment Sub-Committee members of this decision and remind members to have regard to the Corporation's policy when considering future complaints.
 - Remind all Assessment Sub-Committee members that detailed and accurate records of its consideration and decision making should be kept. This will ensure appropriate scrutiny of their decision making can be made.
51. The Corporation will complete the above within four weeks of the final decision.

Final decision

52. I find some fault with the Corporation. The Corporation has accepted my recommendations. Therefore, I have completed my investigation.

Investigator's decision on behalf of the Ombudsman