

Law and Governance

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Councillor Shah Jahan Khan
6 Havelock Road
Oxford
OX4 3EP

01 April 2011
Our ref: HML/703/4/31
Your ref:

Dear Councillor Khan

Standards Investigation - Alleged Breach of the Code of Conduct

I write further to the email from Alec Dubberley to you dated 16 March 2011.

I am writing to confirm that this Council's Standards Committee has received an allegation that you have failed to declare a personal and prejudicial interest at the meeting of Full Council on 21 February 2011.

In accordance with the legislation for assessing such complaints, the Council's Standards Assessment Panel met on 14 March 2011 to consider what action, if any, to take in respect of the allegations, and a copy of the notice of the decision is enclosed with this letter.

As you will see, the Panel decided to refer the complaint to the Monitoring Officer for investigation. I should stress that this is not in any way a decision that you have failed to observe the Code rather that the matter merits investigation in accordance with the guidance on the assessment of complaints issued by Standards for England and the Council's assessment criteria.

A number of points arise from the decision that the specified matters should be investigated:

- Jeremy Thomas, as Monitoring Officer has appointed Mr Nick Graham, who is a solicitor employed by Oxfordshire County Council to conduct the investigation on his behalf.
- Mr Graham will wish to speak to you during the investigation, and will contact you about this in due course.
- When Mr Graham has completed his investigation, he will submit a report to Jeremy Thomas, which then has to be considered within a period of 3 months. If Mr Graham concludes that you did not fail to observe the Code of Conduct then this Council's Standards Committee will meet to hold what is known as a "consideration meeting", at which it will decide whether it accepts the findings of the investigator. If so, the matter would be closed at that point. If not, a Hearing would

take place into the allegations.

- Should Mr Graham conclude that there was a failure to observe the Code, then the matter would be referred directly for a hearing.
- Mr Graham will supply you with a copy of your report and prior to that may send you a copy of a draft for comment.
- Further information about the investigation process may be found on the website of Standards for England – www.standardsforengland.gov.uk for the home page, and <http://www.standardsforengland.gov.uk/Guidance/TheLocalStandardsFramework/> for its published guidance on different aspects, including the assessment, investigation and determination of complaints.
- The attached decision notice is a public document, and by law has to be available for inspection at the Council Offices for a period of six years beginning with the date that the Assessment Panel held its meeting. The fact that an investigation is to be undertaken is, therefore, "in the public arena" but the details of that investigation are not, at least until the point that the investigator's report is considered. Mr Graham will therefore remind you of the confidentiality of the matter and your obligations under the Code of Conduct not to disclose confidential information.

I should also remind you of the contents of paragraph 3 of the Code, which includes provision that you must not "intimidate or attempt to intimidate a person who is likely to be (i) a complainant, (ii) a witness, or (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's Code of Conduct".

Finally, I should mention that the complainant will also be notified of the position as outlined above.

I hope this explains the position satisfactorily, but please do not hesitate to contact me if you have any queries.

Yours sincerely



Helen Lynch
Lawyer

For the Head of Law and Governance

STANDARDS COMMITTEE

ASSESSMENT PANEL

www.oxford.gov.uk



**Members: Martin Gardner (Chair)
Chris Ballinger
Councillor Gill Sanders**

Monday 14 March 2011

DECISION NOTICE: REFERRAL FOR INVESTIGATION

**Councillor Shah Jahan Khan (Oxford City Council)
Case Reference 703/4/31**

NOTE: The subject member and complainant should note that the complaint remains in an unconcluded state. Until it is concluded you should restrict the passing on of any information that could breach the provisions of the Data Protection Act 1998, impede any investigation, represent a breach of confidentiality or otherwise constitute a breach of the Code of Conduct.

1. ALLEGATION AND FUNCTION OF PANEL

It is alleged that Councillor Shah Jahan Khan (a member of Oxford City Council) failed to comply with the Members' Code of Conduct. The function of the Assessment Panel is to decide if allegations of breaches of the Members' Code of Conduct merit investigation.

2. SUMMARY OF COMPLAINT

It is alleged that Councillor Khan failed to comply with the Members' Code of Conduct because of his failure to declare a personal and/or a prejudicial interest at a meeting of the Full Council on 21 February 2011.

3. DECISION

In accordance with Section 57A(2)(c) of the Local Government Act 2000, as amended, the Assessment Panel of the Standards Committee decided to refer the allegation to the Monitoring Officer for investigation

Potential breaches of the Code of Conduct identified

We have identified below the paragraphs of the Code of Conduct which may apply to the alleged conduct:

- Section 2 – Declaration of interests

This decision notice is sent to the person or persons making the allegation and the member against whom the allegation was made

5. ADDITIONAL HELP

If you need additional support in relation to this or future contact with us, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Disability Discrimination Act 2000.

We can also help if English is not your first language.

Please contact Alec Dubberley, Democratic Services Officer on 01865 252402 or adubberley@oxford.gov.uk if you require any further assistance.

Signed *Martin Gardner*

Date: 15 March 2011

Martin Gardner
Chair of the Standards Committee Assessment Panel

Authority under which the decision is made

The Local Government and Public Involvement in Health Act 2007 amends the Local Government Act 2000 which now provides for the local assessment of complaints that members of relevant authorities may have breached the Code of Conduct. The Standards Committee (England) Regulations 2008 relate to the conduct of authority members and the requirements for dealing with this.

The regulations set out a framework for the operation of a locally based system for the assessment, referral and investigation of complaints of misconduct by members of authorities. They amend and re-enact existing provisions in both the Relevant Authorities (Standards Committees) Regulations 2000, as amended, and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended.

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INVESTOR IN PEOPLE



Councillor Shah Jahani Khan
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OX4 3EP

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Law and Governance
Chief Executive's Office
County Hall, New Road
Oxford
OX1 1ND

DX 4310 OXFORD

Peter G Clark
County Solicitor and Monitoring Officer
Head of Law and Governance

Date: 11 April 2011
Direct Fax: 01865 783361

Your Ref:

Please ask for Nick Graham
Direct Line: 01865 323910
Email: nick.graham@oxfordshire.gov.uk
Our Ref: NG/cdd/41597

Dear Councillor Khan

**Re: Standards Investigation – alleged breach of the Code of Conduct
Case Reference – 703/4/31**

I write further to Helen Lynch's letter of 1 April 2011 and Councillor David Williams's allegation that you may have failed to comply with Oxford City Council's Code of Conduct.

I have been appointed by Jeremy Thomas to investigate the allegations which have been made about your conduct. I would like to assure you that although the Standards Committee has referred the allegation for investigation, the Standards Committee has formed no view on the matters set out in the allegation. The investigation will enable the Standards Committee to reach a conclusion on whether there has been any failure to comply with Oxford City Council's Code of Conduct. Part of the investigation will include seeking information and documentation from you, and other people, where relevant.

I enclose a copy of the documents which make up the allegation made against you. These are:

1. A copy of the complaint (redacted)
2. An extract from the background papers to the Full Council meeting on 21 February 2011
3. Register of Interests
4. A copy of the model Code of Conduct.

I have redacted a copy of the complaint form to preserve confidentiality.

You may disclose these documents to your solicitor, or other representative, should you choose to appoint one, for the purposes of seeking advice in relation to this investigation. The document should not be disclosed to anyone else.

I also attach a copy of the Minutes of the Full Council meeting on 21 February 2011.

It would assist if you could please provide the following information in writing by 25 April 2011 in order that I can progress the investigation:

- (a) The date you first elected as Councillor to Oxford City Council.
- (b) When you were last elected to Office and the term for which you were elected.
- (c) The positions of responsibility you held, or continue to hold.
- (d) When you provided a written undertaking to observe the Council's Code of Conduct.
- (e) Details of any training you received on the Code of Conduct.

Attached to this letter is the documentation relevant to this complaint. It includes a register of your interests and I should be grateful if you could confirm that that register is complete and up to date.

You are welcome to provide me with your initial response to the allegation should you wish to do so at this point.

I hope to complete the investigation by early June. In order to assist in the progress of the investigation could you please let me know of any periods of time, such as holidays, when you will not be available.

Upon receipt of the information requested above it may be that I will need to meet with you face to face and discuss the complaint more fully. I will obviously write to you to arrange that.

I want to keep you informed of the progress of the investigation, so do feel free to contact me at any stage.

If you have any queries I can be contacted directly on the contact number above or by email on the address above. Please quote the reference number on all correspondence.

Yours sincerely

Nick Graham
Deputy Head of Law and Governance
Oxfordshire County Council

Encs.

Councillor Shah Jahan Khan

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Mr. Nick Graham
Deputy Head of Law and Governance
Oxford County Council
County Hall.
Reference number: NG/CDD/41597

Dear Sir,

Thank you for your letter dated 11th April 2011, case reference: 703/4/31. I would like to provide information on the questions you have asked in order to assist you further.

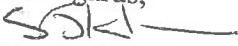
- (a) I was first elected as a Oxford City Councillor in May 2006.
- (b) I was last elected as City councillor in May 2010.
- (c) I do not hold responsibilities of such.
- (d) I provided a written undertaking to observe the Council's Code of Conduct on the 25th June 2007.
- (e) I received training on the Code of Conduct in 2010.

I am planning to be on leave during mid-June for approximately 3-4 weeks. I would like to add that I also represent on two committees which are, Cowley Community Centre and Florence Park Community Centre. I am also a self-employed taxi driver.

I would like to point out that I am a member of the Labour Group on the City Council, which at present, forms the political administration of the Council. I supported the budget which my party proposed for 2011-12 at the Council meeting in February. However, the Lib-Dems and the Green party, both presented alternative budgets which were voted on as amendments. I voted against both amendments which were taken 'as a whole' not as a series of constituent proposals. Due to this there was no specific debate on or reference to the Green party proposal to raise taxi licensing fees and my vote against the amendment was in no way influenced by the inclusion of this proposal because I voted against the amendment 'as a whole'. My employment is entered on the Council's Register of member Interests and I do not take part in any discussions associated with taxi licensing. However, on this particular occasion the reference to licensing fees included a very small part of a composite motion seeking to oppose the administration budget.

If you need any other information to assist you with your investigation, please do not hesitate to contact me.

Kind regards,


Cllr Shah Jahan Khan

**Notes of a meeting with Councillor Khan
18 May 2011 – 10:30–11:30am
Oxford City Council Offices**

In attendance:

Nick Graham (NG) - (Solicitor; Investigating Officer)
Councillor Khan
Councillor John Tanner

Preamble

NG started off with a preamble of the purpose of the meeting and a short summary of the Standards Committee decision, the role of the investigator and that the interview was not being recorded, but notes would be taken of the interview which would be drafted up and sent to Councillor Khan for approval. NG outlined that the information provided in the Tribunal would assist in the drafting of a report that would go to the local Standards Committee. That report would be in draft in the first instance and Councillor Khan would have an opportunity to comment on it, as would the Complainant.

Training

Councillor Khan confirmed that he had been provided with training in his role as Councillor and this had happened in 2010 and he undertook training once a year. The training was undertaken by officers and it covered the details in the Code of Conduct together with, specifically, personal and prejudicial interests. Councillor Khan confirmed that he completed, and kept under review, his declarations of interest form, and also confirmed that he received training on this.

Roles

Councillor Khan confirmed that he was a member of the Labour Group on the City Council and that, although he was a member of the Scrutiny Committee for Value and Performance, he held no other formal position.

He confirmed that, in the time he has been a Councillor over four to five years, he had never received a complaint before.

Interests

Councillor Khan confirmed that he was self employed and he held a taxi cab licence and that licence he received from the City Council.

Complaint

NG read out the details of the complaint. Councillor Khan indicated that, although he had never taken specific advice in the preparation for any meeting, nor in preparation for the meeting in February 2011, he was aware of when it was appropriate to withdraw from meetings. In some circumstances senior Councillors would provide advice, but he had never felt the need to seek advice from the Monitoring Officer over his interests and the procedure for declaring those interests.

In relation to the specific complaint, Councillor Khan indicated that he did not see that there was a need to make a declaration of interest in this particular case because, although there was in the budget an item that formed part of an officer's report in relation to taxis, the motion was presented to him as a general motion and required him simply to approve the fees and charges that were set out in more detail in the attached report.

Councillor Khan confirmed that he considered that the meeting in February was part of the setting of the Council Tax process and that because it was presented as a composite budget motion to approve he did not consider he had a prejudicial interest.

Councillor Tanner indicated that one of the areas of concern was that in a Council where the voting on a given issue can be close because of the political make-up of the Council, if Labour members were unable to vote on a budget then this would cause many difficulties for the controlling group who wish to get a budget through.

Councillor Khan confirmed that in the past the other members of the Labour Group, who were also taxi drivers, would decide between themselves whether they considered they had a prejudicial interest and they would then withdraw if they concluded that they did have such an interest. Councillor Khan's concern was that he wanted to pass a budget. He was clear that he had already declared his personal interest on the registration form that he completed, and did not consider it was necessary in these circumstances for him to make a declaration at the beginning of the meeting.

Furthermore, Councillor Khan considered that the proposal as identified in the budget report was for an increase in the tax licensing fees and he did not see that his interest could have been prejudicial as it would have penalised him in the same way as other taxi drivers.

Councillor Khan was clear that if a specific issue in relation to taxis had been identified then, as was the case in the past, he would have withdrawn from the meeting.

NG then asked Councillor Khan with regard to the voting on the Lib Dem and Green Party alternative budget proposals, and specifically referred Councillor Khan to the budget proposals in 2008 where a Green alternative budget proposal identified an increase in taxi licence fees. Councillor Khan confirmed, as was identified in the Minutes, that he had declared a personal and prejudicial interest at the time because he considered that this had been separately identified to him.

NG took Councillor Khan through the Minutes of the Full Council meetings in 2009 and 2010 for the setting of the budget and no declarations were made by Councillor Khan in relation to either the proposed budget by the Labour Group or the alternative budget proposals. Councillor Khan indicated that the reason for this was because licence fees were not separately identified in the alternative budgets.

NG identified paragraph 8 in the Model Code of Conduct that related to personal interest and Councillor Khan confirmed that he would have a personal interest in any business of the Authority where it related to any employment or business carried on by him. Furthermore, in relation to paragraph 10, he considered that as he was involved in a meeting which involved the setting of the Council Tax, he did not consider he had a prejudicial interest.

Furthermore, Councillor Khan indicated that he agreed with the Standards Board Guidance which suggested that he had no prejudicial interests where the motion to be considered calls on members to adopt a budget, the details of which are set out in an officer report. Standards Board guidance seemed to suggest that general motions that are clearly part of the Council Tax setting process indicated that Members can attend, debate and vote on that motion, whatever the effects might be on their personal interests.

Councillor Khan considered that he was precisely in those circumstances as it related to the proposed budget.

In relation to the proposed amendments he did not recall that the alternative budgets specifically raised the issue of taxi fees.

It was agreed that NG would look at the proposed alternative budgets by the Lib Dem and Green Group and provide a copy to Councillor Khan for his further consideration.

Earlier declarations

Councillor Khan indicated that when any item of business had come up as part of the Council's consideration he had always made declarations where relevant.

Councillor Khan gave an example of a recent planning decision he had been involved in where he knew one of the individuals involved, who he had been

close to for some 20 years, and he had made appropriate declarations. Councillor Tanner confirmed that it was common for the Group as a whole to remind each other where there was the potential for problems to arise and where it was appropriate for members to declare interests. Councillor Khan indicated that he was well aware of when the alarm bells should ring and in relation to this particular budget item he did not consider the alarm went off.

Miscellaneous and Actions

- NG confirmed that he would write up a transcript of the meeting and send that to Councillor Khan for comment.
- NG would seek to obtain a copy of the Alternative Budget Proposals and share these with Councillor Khan.
- Councillor Khan was likely to be away at the beginning of June until the end of June.
- We discussed generally the powers of the Standards Committee in terms of any proposed penalty should they find that there had been a breach of the Code.

Nick Graham
Deputy Head of Law & Governance
Oxfordshire County Council

18 May 2011