
**REPORT OF AN INVESTIGATION UNDER SECTION 59
LOCAL GOVERNMENT ACT 2000**

COMPLAINT REFERENCE:	703/4/30
NAME OF COUNCILLOR COMPLAINT AGAINST:	Councillor Nuala Young Oxford City Council
NAME OF COMPLAINANT:	Councillor Edward Turner
NAME OF INVESTIGATOR:	Tim O’Gara, Solicitor
DATE OF REPORT:	25 July 2011

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1. EXECUTIVE SUMMARY

- 1.1 Councillor Turner has alleged that Councillor Nuala Young has breached the Oxford City Council's Code of Conduct ("the Code") by failing to declare a personal and prejudicial interest at a meeting of Full Council of Oxford City Council on 21 February 2011. The alleged personal and prejudicial interest arose at a meeting of the Full Council of Oxford City Council on 21 February 2011 during Questions on Notice from Members of Council relating to Tourist Information Centres and Destination Management Oxford.
- 1.2 It is concluded that Councillor Young breached the Code of Conduct by failing to declare a personal interest at the meeting of Full Council of Oxford City Council on 21 February 2011 but that she did not also have a prejudicial interest.

2. ALLEGATION

- 2.1 Councillor Turner's complaint is set out in full in Appendix A. His complaint is supplemented by his statement which is set out in Appendix D.
- 2.2 The complaint centres around an alleged failure to declare a personal and prejudicial interest at a meeting of the Full Council of Oxford City Council. In consequence of this alleged breach, reference is made in Councillor Turner's complaint to another possible breach of the Code, namely that Councillor Young used her position to improperly confer an advantage for herself.
- 2.3 Whilst the Decision Notice dated 14 March 2011 referring this matter for investigation summarised the complaint as relating to a failure to declare a personal and/or a prejudicial interest, those instructing me have clarified by email dated 28 June 2011 that the intention of the Standards Committee Assessment Panel was that the entirety of Councillor Turner's complaint should be referred for investigation. The relevant Decision Notice and correspondence are set out in Appendix H. On the basis of that instruction, this report has considered whether Councillor Young failed to declare a personal and/or prejudicial interest and whether Councillor Young used her position to improperly confer an advantage on herself.

- 2.4 The relevant meeting at which the alleged interest arose was held on 21 February 2011 and the period leading up to the meeting, as well as the meeting itself on 21 February 2011 are alleged to be the time when Councillor Young used her position as a member to confer an advantage on herself.

3. RELEVANT LEGISLATION

- 3.1 Oxford City Council has adopted the Model Code of Conduct as set out in the Local Authorities (Model Code of Conduct) Order 2007. A copy of the Code is contained in Appendix B. The paragraphs of the Code that are relevant to this investigation are paragraphs 6, 8, 9, 10 and 12. These paragraphs concern use of one's position as a councillor to improperly confer an advantage on oneself and declarations of personal and prejudicial interests.

- 3.2 Paragraph 6(a) of the Code provides that a councillor

“...must not use or attempt to use [her] position as a member improperly to confer on or secure for [herself] or any other person, an advantage or disadvantage.”

- 3.3 Paragraph 8(1)(a)(iii) of the Code provides that a councillor has a personal interest in any business of her authority where “...it relates to or is likely to affect any employment or business carried on by [her]”

- 3.4 In addition paragraph 8(1)(b) of the Code provides, so far is relevant to the current investigation, that a councillor has a personal interest in any business of her authority where

“...a decision in relation to that business might reasonably be regarded as affecting [her] well-being or financial position...to a greater extent than the majority of ... other council tax payers, ratepayers or inhabitants of [her] authority's area.”

- 3.5 Paragraph 9(1) of the Code refers to the action that a councillor with a personal interest must take when she has a personal interest and attends a meeting of her authority at which that business is considered. She must

“...disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.”

- 3.6 Paragraph 10(1) of the Code provides that “...where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest.”
- 3.7 Paragraph 12(1) of the Code provides that a member with a prejudicial interest must withdraw from the room where the meeting is being held whenever it becomes apparent that the business is being considered at that meeting unless he has obtained a dispensation from the authority’s Standards Committee.

4. EVIDENCE AND FINDINGS OF FACT

BACKGROUND

- 4.1 The Report that was prepared for the Value and Performance Scrutiny Committee on 22 February 2011 provides a useful summary of the policy background to this complaint. Since 2010, Oxford City Council has embarked on a series of measures to enable the private tourism sector to become more strategically involved in the promotion of tourism in the City of Oxford and in the County of Oxfordshire through the Oxford and Oxfordshire Destination Management Organisation (“DMO”), a public/private partnership. This DMO is responsible for a range of development and promotional activities aimed at attracting visitors to the City and the County.

EVENTS PRIOR TO 21 FEBRUARY 2011

- 4.2 Councillor Young has been a member of Oxford City Council since 2006. When she is not undertaking public duties as a City Councillor, she works as a tour guide. It is apparent from her evidence that she is a self-employed freelance tour guide and this is not in dispute.. She has a range of clients and has a wide network of contacts in the

tourism industry both within the UK, but also overseas. One of her clients is the Tourist Information Centre in Oxford.

- 4.3 I have considered the evidence of Councillor Young and Digna Martinez, the Tourist Information Centre ("TIC") Manager in respect of the work that Councillor Young undertakes for the TIC in Oxford. Their statements are set out in Appendices C and D respectively. The statements provided by Councillor Young and Digna Martinez as to the amount of work that Councillor Young undertakes as a tour guide for the TIC are consistent. Both accounts demonstrate that Councillor Young does not undertake a significant amount of tour guide work for the TIC. Furthermore, there are significant periods of time when she does not do any work for the TIC. I am satisfied that the tour guide work of Councillor Young for the TIC is infrequent and irregular and only a small fraction of her work as a tour guide.
- 4.4 Prior to the Full Council meeting on 21 February 2011, Councillor Young had various discussions with members of the tourism trade in Oxford. In particular, she spoke with Digna Martinez, although the recollections of both Councillor Young and Digna Martinez are quite vague as to what was discussed and when exactly those conversations took place. Notwithstanding this point, the content of the discussions is not a material factor as the questions that were asked by Councillor Young at the meeting on 21 February 2011 were more strategic than directly related to the day to day work of tour guides. Councillor Young also spoke with Vivian Alexander of Heather House regarding the handover of the Information Centre to the DMO. I am satisfied that these conversations took place and that Councillor Young had engaged in some discussions with other members of the tourist industry prior to the Full Council meeting on 21 February 2011.
- 4.5 Councillor Young also refers to discussions that she had in respect of interests with other members of her political group prior to the meeting on 21 February 2011 and that there was a general view that she did not need to declare an interest at that meeting. Although there is no independently verifiable third party evidence to corroborate this claim, on balance, I am satisfied that it is more likely than not that these discussions took place prior to the meeting on 21 February 2011. In any event, the decision to make a declaration of interest rests ultimately with the individual member.

4.6 Prior to the meeting on 21 February 2011, Councillor Young had submitted three questions for which written responses were provided. The questions related to the Tourist Information Centre in Oxford and Destination Management Oxfordshire. The questions that were asked are found in the minutes to the meeting of 21 February 2011 set out in Appendix F. To summarise, the questions that Councillor Young asked Councillor Cook are as follows.

- a. Some years ago our Information Centre was running so impressively that it won awards. The cost/loss to the city of running the service has been said to be between £80,000 to £100,000 a year, did that figure include the nominal cost of the rental of the building as well as the staffing?
- b. What is the estimated cost of the Information Centre in loss of rent and staffing?
- c. In the last five years Oxford has attracted more visitors than ever, with people often choosing to come to Oxford rather than London. Most visitors expect to visit a college but the colleges are now saying that they cannot make more visitors and need to limit visitors to the present numbers. There is no room for growth. Given these two factors how can it make sense for us in this year of financial difficulty to contribute £100,000 to Destination Management Oxford as well as our Information Centre building and staff, since it can only really benefit the County, which has room for growth in tourism, but is only contributing £40,000 and using our building and staff as well.

FULL COUNCIL 21 FEBRUARY 2011

4.7 Councillor Young attended the meeting on 21 February 2011 in her capacity as a member of the Council. In her statement, Councillor Young outlined her understanding of the Code and when she should declare an interest. She refers to having attended annual training on the Code. In her statement, she says that it is her understanding of the Code that it is only necessary to declare an interest when there is a report under consideration and that it is not necessary to do so when simply asking a question for information. I am satisfied that this is a genuinely held belief on

the part of Councillor Young as to the interpretation of the Code. Furthermore, no evidence has been available to me to undermine the genuine nature of that belief.

4.8 At the Full Council meeting on 21 February 2011, Councillor Young asked supplementary questions in respect of each of the questions that she had asked in advance of the meeting. These questions also related to the Tourist Information Centre in Oxford and Destination Management Oxfordshire. The supplementary questions are found in the minutes to the meeting of 21 February 2011, set out in Appendix F. Councillor Young did not declare a personal interest when asking these questions. To summarise, the supplementary questions that were asked were as follows.

- a. In a supplementary question to the first question, Councillor Young asked if Councillor Cook would agree that the services provided to Guides and Guesthouses had reduced due to the reduced numbers of staff at the Tourist Information Centre.
- b. In a supplementary question to the second question, Councillor Young asked if Councillor Cook could supply the number of staff employed in the TIC.
- c. In a supplementary question to the third question, Councillor Young asked which business had contributed to the £100K.

VALUE AND PERFORMANCE SCRUTINY COMMITTEE 22 FEBRUARY 2011

4.9 At the Value and Performance Scrutiny Committee on 22 February 2011, a report entitled Visit Oxfordshire Destination Management was under consideration. Councillor Young was asked to substitute at this meeting. A copy of this report is set out in Appendix F. She attended the meeting, however when this item was under consideration, she declared a personal interest. Councillor Young explains in her statement that the reason why she declared an interest at this meeting was because there was a report under consideration and that this was different from the meeting of Full Council where she was only asking questions for information.

5. CONCLUSIONS

- 5.1 In reaching my conclusion, I have taken account of the advice and guidance from the Standards Board as well as the information received from the Councillor Turner, Councillor Young and Digna Martinez and all other documents that I have obtained during the course of my investigation.
- 5.2 Whilst it is clear that Councillor Young did not declare any interest at the 21 February 2011 meeting of the Full Council, in order to establish whether she breached the Code of Conduct, three questions must be addressed.
- a. Does the Code apply to the circumstances giving rise to the complaint?
 - b. If yes to a, did Councillor Young use or attempt to use her position to improperly confer an advantage on herself?
 - c. If yes to a, did Councillor Young have a personal interest?
 - d. If yes to c, did Councillor Young have a prejudicial interest?

Each of these questions will be considered in turn.

Does the Code apply to the circumstances giving rise to the complaint?

- 5.3 Paragraph 2(1) of the Code states that you must comply with this Code where you conduct the business of your authority in an official capacity. Councillor Young was acting in her official capacity as a councillor when she asked questions in advance of the Full Council meeting on 21 February 2011 and when attending the Full Council meeting on 21 February 2011 to which the complaint refers. Therefore, there is no doubt that the Code applies to this case.

Did Councillor Young use or attempt to use her position to improperly confer an advantage on herself?

- 5.4 To meet the threshold required to establish a breach of paragraph 6(a) of the Code, the questions that Councillor Young asked, in advance of the meeting and at the meeting on 21 February 2011, must have been asked with the intention of using, or attempting to use, her public office for her own personal gain. An example of this is where the member seeks to further her own private interests through her position as a member.
- 5.5 I do not see that there is a sufficient enough connection between the factual information that was obtained by asking these questions and the *ad hoc* work that Councillor Young undertakes as a tour guide such as to establish that Councillor Young was furthering or seeking to further her own private interests. I am satisfied that the information sought was not sought with the intention of furthering Councillor Young's private interests, nor was it an attempt to do so. Furthermore, I do not see how the information that was obtained could be used by Councillor Young to further her own private interests.
- 5.6 I conclude that Councillor Young did not use her position improperly to confer an advantage on herself by asking questions about Destination Management and the TIC prior to and at the meeting of Full Council on 21 February 2011.

Did Councillor Young have a personal interest?

- 5.7 For a personal interest to exist in this case under paragraph 8(1)(a)(iii) of the Code, the questions that Councillor Young asked at the Full Council meeting must relate to or be likely to affect any employment or business carried on by her.
- 5.8 Alternatively, in accordance with paragraph 8(1)(b), the questions that Councillor Young asked at the Full Council meeting would need to affect Councillor Young's wellbeing or financial position to a greater extent than other persons living in the authority's area.

- 5.9 The definition of a personal interest is deliberately very broadly drafted to enable a relatively wide range of personal interests to be declared in authority meetings without necessarily limiting participation. The wide scope reflects the policy of promoting transparency in local government that lies at the heart of the Code. However, simply because an interest meets the broad tests applicable to a personal interest does not mean that the interest is also prejudicial.
- 5.10 It is clear that Councillor Young did not consider that she had an interest. However, Standards for England advises, in line with the High Court judgment in *Scrivens v Ethical Standards Officer (2005)* states that:
- “Whether a member has a personal or a prejudicial interest is a question to be determined objectively. The mistaken but reasonable view of the member that he has no such interest is irrelevant. The test for failure to comply with the paragraph dealing with personal and prejudicial interests is similarly objective.”
- 5.11 In the context of a paragraph 8(1)(b) interest, Standards for England advises that
- “No personal interest will arise where a matter affects the member to the same extent as other council tax payers, ratepayers or inhabitants of the authority’s area...However members still need to consider all the relevant factors. If the matter only affects one particular part of any authority (for example a small town in a large rural district) or a particular group within the authority (for example all parents with school age children) a personal interest will still arise.”
- 5.12 Dealing with a personal interest under paragraph 8(1)(a)(iii), the questions that Councillor Young asked were sufficiently enough related to the tourism industry and the work of tour guides within the City of Oxford and as such related to the business in which she works as a self-employed tour guide.
- 5.13 I conclude that Councillor Young had a personal interest by virtue of the self-employed business that she carries on as a tour guide in Oxford and the surrounding area. In failing to declare such an interest at the Full Council meeting on 21 February 2011, she breached paragraph 9(1) of Oxford City Council’s Code of Conduct.

Therefore, it is necessary to establish whether Councillor Young had a prejudicial interest.

Did Councillor Young have a prejudicial interest?

- 5.14 For a prejudicial interest to exist in this case, I have taken into consideration the guidance of Standards of England. In line with its advice, when determining whether a prejudicial interest exists, consideration should be given to

“how a reasonable and objective observer with knowledge of all the relevant facts would view the situation and...how the circumstances are likely to impact on the member’s judgment of the public interest...The judgment must be a reasonable one and an interest will only be prejudicial if it can objectively be regarded as significant.”

Standards for England also advises that

“For an interest to be prejudicial it must be ‘likely to prejudice’ the member’s judgment. In other words the interest must be likely to harm or impair the member’s ability to judge the public interest. The mere existence of local knowledge or connections within the local community will not normally be sufficient to meet the test. There must be some factor that others reasonably think will positively harm the member’s ability to judge the public interest objectively.”


- 5.15 The Standards Board refers to situations where a member shares a personal interest with a large number of people within the authority’s area. Standards for England comments that although each case must be considered on its own facts, “if a member shares a personal interest with a large number of people it is less likely that a prejudicial interest will exist.”
- 5.16 In considering whether a prejudicial interest exists, I have taken account of all the relevant facts. For example, I have considered the discussions that Councillor Young has had with members of the tourist industry and in particular with named individuals, such as Digna Martinez and Vivian Alexander. The questions that were asked were objective questions which elicited factual information relating to the financing of the TIC and Destination Management Oxfordshire at the strategic level.

The questions did not have any significant impact on her work as a freelance tour guide.

5.17 On balance, I do not consider that a reasonable or objective member of the public would consider Councillor Young's interest to be likely to prejudice her judgment of the public interest when asking the questions and the supplementary questions at the meeting of the Full Council on 21 February 2011. Therefore, I conclude that Councillor Young did not have a prejudicial interest at the meeting of Full Council on 21 February 2011.

5.18 As I have concluded that there was no prejudicial interest, it is not necessary to consider whether Paragraph 12 of the Code applies.

5.19 The matter will now be referred to the Standards Committee of Oxford City Council for determination.



Tim O'Gara
Solicitor
25 July 2011

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