

INVESTIGATION REPORT

Case Reference: 703/4/31

Report of an investigation under section 59 of the Local Government Act 2000 by Nicholas Graham, Solicitor, appointed by the Monitoring Officer for Oxford City Council into allegation concerning Councillor Sajjad Malik

INVESTIGATION REPORT

CONTENTS

1. Executive Summary
2. Councillor Malik's official details
3. The relevant legislation and protocols
4. The evidence gathered
5. Summary of the material facts
6. Councillor Malik's additional submissions
7. Reasoning as to whether there has been failures to comply with the Code of Conduct
8. Finding

Appendix A Schedule of evidence taken into account and list of unused material

INVESTIGATION REPORT

1. Executive Summary

- 1.1 The complaint against Councillor Malik relates to an alleged failure to declare a “personal and/or prejudicial interest at the meeting of Full Council on the 21 February 2011 when the budget setting item was discussed and determined” on the grounds that an item for consideration in the Council’s budget concerned taxi licence fees and the Councillor was a taxi driver.
- 1.2 I do not consider that Councillor Malik had a prejudicial interest in the matter before Full Council on the 21 February 2011 when considering the Executive’s budget proposals. I also do not consider he had a prejudicial interest when considering the amendments to the Executive’s budget as proposed by the Liberal Democrat and Green Groups.
- 1.3 I consider that Councillor Malik had a personal interest in the matters before Full Council at the meeting on the 21 February 2011 and he ought to have reasonably been aware of that interest.
- 1.4 I find that there has been a breach of the Council’s Code of Conduct for Members as Councillor Malik failed to declare his personal interest. However, I consider this to be a minor and technical breach.

2. Councillor Malik’s official details

- 2.1 Councillor Malik was elected to office most recently in 2008 for a term of four years. Councillor Malik is also an elected member of Oxfordshire County Council.
- 2.2 Until April 2011 he was an Executive Member of the City Council with responsibility for safer communities. At present he holds no other role at the City Council other than being the Councillor for Cowley Marsh.
- 2.3 Councillor Malik gave a written undertaking to observe the Code of Conduct on 1 May 2008
- 2.4 Councillor Malik has received training on the Code of Conduct, both as a City Councillor and as a County Councillor when he first became elected for the East Oxford Division.

3. The relevant Legislation and Protocols

INVESTIGATION REPORT

- 3.1 The Council has adopted the model Code of Conduct (as set out in the Local Authority's model Code of Conduct Order) 2007. The relevant paragraphs of that model are as follows:

Personal Interest – Paragraph 8

- 8(1) *You have a personal interest in any business of your authority where either –*
- (a) *it relates to, or it is likely to affect*
...
 - (iii) *any employment or business carried on by you*
 - (b) *a decision in relation to that business might reasonably be regarded as affecting your wellbeing or financial position, or the wellbeing, or financial position, of a relevant person to a greater extent than the majority of –*
 - (a) *(in the case of authorities with electoral divisions or wards) other Council tax payers, rate payers or inhabitants of the electoral division or Ward, as the case may be, affected by the decision*

Disclosure of personal interests

- 9(1) *Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.*
- 9(4) *Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.*

Prejudicial interest generally paragraph 10

- 10(1) *Subject to sub-paragraph (2) 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 where a member of the public with a knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement on the public interest. Paragraph (2) you do not have a prejudicial interest in any business of the authority where that business –*
- (a) *does not affect your financial position or the financial position of the person or body described in paragraph 8*
...

INVESTIGATION REPORT

(c) *relates to the functions of the authority-*

(vi) *setting Council tax or preset under Local Government Finance Act 1992.*

4. Evidence gathered

- 4.1 I have taken account of oral evidence from Councillor Malik at an interview on 13 June 2011.
- 4.2 I have also taken account of documentary evidence obtained from Helen Lynch, Solicitor, Oxford City Council Legal Services. This has consisted of agendas and Minutes of 21 February 2011 Council meeting, together with agenda and Minutes of earlier Full Council meetings going back to 2008.

5. Summary of material facts

- 5.1 At a meeting of the Full Council on 21 February 2011 consideration was given to the Executive Budget and a motion was put forward for the approval of that budget which asked Full Council to approve a number of matters including the fees and charges set out in an appendix to an Executive Report dated 9 February 2011. Those fees and charges related to a large number of specific items including taxi licence fees. The Executive's proposal identified a number of increased charges relating to a number of licence related matters for taxis.
- 5.2 Councillor Malik attended the Full Council meeting on 21 February 2011 and was in attendance for the debate with regard to the Council budget and voted in favour of it. He did not consider he had a prejudicial interest requiring him to withdraw from the room and not participate.
- 5.3 Prior to the voting of the Executive Budget, both the Liberal Democrat Group and, separately, the Green Group advanced Alternative Budgets. The Liberal Democrat budget makes no reference, on the face of it, to taxi licence fees. In the circumstances Councillor Malik did not consider it was necessary to declare any interests, nor withdraw from the meeting.
- 5.4 The Alternative Budget proposed by the Green Group does mention, on the face of it, a reference to taxi licence fees, but this was not specifically mentioned in the debate, either when the Green Group advanced their budget from the Deputy Labour Leader. However, Councillor Malik did not consider it was necessary to declare any interest, nor withdraw from the meeting.
- 5.5 A vote was taken on the proposed amendments to the Executive Budget which was defeated. Accordingly, the Executive Budget proposed was voted on and passed.

INVESTIGATION REPORT

- 5.6 Other than in 2008, the Minutes of the earlier Full Council at which the budget was set, show that no declarations of interests were made by members of the Council who were taxi drivers, notwithstanding the fact that taxi licence fees have formed part of the fees and charges on every occasion. On previous occasions there has been no proposed increase to those charges.
- 5.7 In 2008 the Green Group proposed an increase in taxi licence fees but in addition a proposed grant to taxi licences to enable adaptations to their vehicles. In those circumstances, Councillor Malik, along with other Councillors who were taxi drivers, or owners of taxi licences, declared a personal and prejudicial interest and withdrew from the meeting.

6. Councillor Malik's additional submissions

- 6.1 Councillor Malik is of the view that no prejudicial interest arises by virtue of the fact that the vote was taken in regard to an item that formed part of a composite budget, and in those circumstances it was not necessary to declare a prejudicial interest.
- 6.2 He employs the same argument in relation to why he considered he could vote in relation to the Liberal Democrat and Green Group Alternative Budgets proposed.
- 6.3 In relation to the Liberal Democrat budget, he considers there was no specific mention of taxi licence fees and he saw no reason why he could not participate in the vote in relation to that matter.
- 6.4 Councillor Malik states he is well aware of the Code of Conduct and its requirements and has received appropriate training. Other than in 2008 he has not seen it necessary to declare a personal and prejudicial interest, although he is aware of what that requires in any given circumstance. He received no specific advice from the Monitoring Officer, or senior Councillors, in relation to declaring an interest at Full Council meetings when consideration of the budget was undertaken. Councillor Malik indicated that it had never been raised as an issue in previous years, other than in 2008, when the proposal from the then Green Group would have benefitted him considerably. In those circumstances he did consider it necessary to make a declaration.
- 6.5 Councillor Malik accepted that as a holder of a hackney carriage licence he had a personal interest in any matter that came before him that involved taxi licences by virtue of paragraph 8(1)(a)(iii) of the Code of Conduct.

INVESTIGATION REPORT

7. Reasoning as to whether there have been failures to comply with the Code of Conduct

7.1 There are 2 broad matters that require consideration:

- (a) whether Cllr Malik had a personal and/or prejudicial interest in the motion before Full Council on the 21 February 2011 relating to the budget proposed by the Executive.
- (b) whether Cllr Malik had a personal and/or prejudicial interest in the Alternative Budgets proposed by the Liberal Democrat Group and the Green Group.

Personal interests

7.2 As to the question of personal interests, it is accepted by Councillor Malik that he had a personal interest in the matters before Council on the 21 February 2011, given that he was a holder of a cab licence and the proposals in the budget would impact on his employer financially to a greater extent than other council tax payers. It is clear to me that a personal interest arose.

7.3 However, paragraph 9 of the Code of Conduct sets out the circumstances where a personal interest should be declared. Paragraph 9(1) as quoted above sets out the a Members must declare the nature and extent of their personal interest at a meeting at which business is conducted in which the Member has an interest. Normally that declaration would made “at the commencement of . . . consideration” of the business in which the Member has an interest or, alternatively, when that interest becomes apparent.

7.4 Paragraph 9(4) indicates that the normal obligation to declare a personal interest in any matter only arises where the Member is “aware or ought reasonably to be aware of the existence of the personal interest”.

7.5 In my view, Councillor Malik ought to have reasonably been aware that the item in the budget concerning taxi licence fees was a matter that he had an interest in and he should have declared that interest having considered the paperwork.

7.6 I also consider that in relation to the Green Group budget the same applies and given that the Green Group identified taxi licence fees as a specific line in their alternative proposals, I consider Councillor Malik ought to have declared a personal interest in that matter.

7.7 I accept that the taxi licence proposals, both in the Executive Budget and the Alternative Budget proposals was only one very small line in a larger document, however, I consider it reasonable that Members should appraise themselves of the documentation to identify whether they raise any particular issues which would cause them to consider whether they had an interest in the matter.

INVESTIGATION REPORT

- 7.8 Having come to that conclusion I consider it appropriate to make the point that this was a technical breach of the Code. It is clearly the case that the proposals would have disadvantaged Councillor Malik's employer and, although that does not obviate the personal interest that arose, it is quite clear that no benefit could have arisen for the Councillor. Furthermore, the failure to declare a personal interest had no bearing on the ability of the Councillor to participate in the debate and vote, which would have still been open to him.
- 7.9 I conclude, therefore, that this was a technical breach and minor in nature and had no bearing or consequence for the Full Council meeting of 21 February 2011.

Prejudicial interests

- 7.10 In relation to the second issue, the question of whether Councillor Malik had a prejudicial interest can be reasonably easily dealt with.
- 7.11 Paragraph 10(2)(c)(vi) of the Code of Conduct provides that a member does not have a prejudicial interest in any business of the authority which 'relates to the functions' of setting of council tax. The scope of that exemption has been the subject of guidance issued by the Standards Board for England who consider that the term 'relates to the functions' is wide enough to cover not only the meeting at which the council tax is set but also any preparatory meeting, including most council budget-setting meetings.
- 7.12 The Standards Board for England Bulletin No. 37 (February 2008) states:
- "We believe that no member has a prejudicial interest in motions which call on members to adopt the budget with details which are set out in an officer report. These general motions are clearly part of the council tax-setting process. Therefore, all members can attend, debate and vote on the that motion, whatever the effects might be on their personal interests."*
- 7.13 In the circumstances, I find that Councillor Malik did not have a prejudicial interest when giving consideration to the Executive budget proposals at the meeting on the 21 February 2011 as he can rely on the exemption in paragraph 10(2)(c)(vi).
- 7.14 As regards any prejudicial interest in the proposed amendments to the budget proposals by the Liberal Democrats and Green Group the position is more complicated.
- 7.15 The Standards Board for England has provided some guidance on this issue in its questions and answers document on paragraph 10 of the Code. Having

INVESTIGATION REPORT

indicated the position as set out in in similar terms in Bulletin 37, the guidance states:

“In the event that there are any amendments proposed to the motion which is intended to adopt the budget any “interest” a member might have in voting for cuts in one part of the annual budget so that their other organisation(s) have secure funding in another, is likely to be too remote for a reasonable person to conclude that on these facts it will prejudice their assessment of the public interest.

If an amendment were moved to the budget motion which would (for example) remove or reduce the funding of a body in which a member has a personal interest then that member would need to declare a prejudicial interest in the debate that point. Once an amendment is dealt with, the excluded members should be able to return to the debate at that point. Once an amendment is dealt with, the excluded member should be able to return to the debate and continue the discussions on the rest of the budget.”

- 7.16 The Guidance goes on to say that the position is not free from doubt and may not work in all cases, but should work for the majority of cases and allow members not to feel disenfranchised from one of the major tasks of the council.
- 7.17 In terms of the Liberal Democrat Group proposed amendment, then as there was no specific proposals in relation to taxi fares and so the issue does not arise and I find that no prejudicial interest arises on that issue.
- 7.18 On the Green Group proposal, clearly mention is made of an across the board increase in the taxi licence fares in the paper that was presented, accepting that there was no specific debate on this point.
- 7.19 The difficulty that arises is that the motion debated in its original form was very general and simply asks that Full Council approves a list of fees and charges the details of which are set out in an appendix. The motion put forward by the Green Group did not explicitly seek to amend the wording of the motion. The Green Group proposed a number ‘additional savings’ in the form of a table which proposes an ‘increase in taxi licensing fees in line with inflation’ with a total of the savings achieved by that change for future years set out. According to Councillor Malik there was no reference to taxi fees in the debate that related to these proposed amendments. The proposed amendments would appear to be amendments to the appendix.
- 7.20 One approach would be to find that Councillor Malik as an employee of a taxi firm should have declared a prejudicial interest which arose because the Green Group budget made a proposal which would have affected his business or that of his employer financially. This would assume that a new motion would have to be

INVESTIGATION REPORT

put which would have indicated that the Executive budget proposals would be substituted, or supplemented, by the Green Group proposals.

- 7.21 My view is that Councillor Malik did not have a prejudicial interest in the consideration of the Green Group proposed amendment. I come to that conclusion for the following reasons.
- 7.22 The difficulty with the approach referred to above is that it is envisaged by the guidance that once the proposed amendment to the motion have been debated and decided upon the Councillor with the interest can return and continue in the debate. If it is considered that Councillor Malik has a prejudicial interest then he would be excluded from the whole debate regarding the Green Group proposals as there is no obvious way of separating out the taxi licence fare increase from the many other items listed on the Green Groups' proposed amendments.
- 7.23 Unfortunately there does not seem to be a record of the Alternative Budget proposals put forward by the Green Group in 2008. On the face of the minutes, and in discussion with Councillor Malik, it is clear that at that time the proposal advanced was to give taxi owners a grant to make their vehicles more environmentally friendly. It is assumed that this was specifically proposed as part of a motion and would have been a benefit to those effected by any changes in taxi licences fares. Accordingly, Councillor Malik along with other members who had taxi licences or worked for taxi firms, declared an interest and withdrew from that aspect of the debate. If that is the case, then that would seem to be consistent with Councillor Malik approach to interests generally and, as no separately identifiable benefits were proposed to those in the taxi business in subsequent years, then he did not consider any interest arose.
- 7.24 Even if that assumption is not correct, I am asked to consider whether an interest arose in February 2011.
- 7.25 As the proposals were detailed as one item in a larger list of additional savings, then the ability of a Councillor to separate out his or her interests from that composite proposal, in practical terms, is very difficult. As the Standards Board for England Guidance suggests, Members should not be disenfranchised from the important task of voting on a budget proposal and unless there are explicit proposals to amend a general motion which would have alerted a member to their interest in a matter, I consider a member should not have their ability to deal with the generality of the proposals curtailed.

8. Finding

- 8.1 I find that no prejudicial interest arose at the meeting on 21 february 2011 when Councillor Malik was giving consideration to the Executive Budget proposels.

INVESTIGATION REPORT

Neither do I find that a prejudicial interest arose in relation to where amendments to that Executive Budget were proposed by the Liberal Democrat and Green Group.

- 8.2 I find that a personal interest in relation to the Executive Budget and the proposed amendments to that budget did arise for Councillor Malik.
- 8.3 I find that there was a failure by Councillor Malik to declare that personal interest in contravention of the Code of Conduct.

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Deputy Head Law & Governance
Oxfordshire County Council

13 July 2011

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