

FENLAND DISTRICT COUNCIL

DECISION OF CONDUCT COMMITTEE

Subject Members:	Councillor Simon King
Complainant:	Carol Pilson, Monitoring Officer
Chairman:	Councillor Sam Hoy
Panel Members:	Councillor Humphrey and Councillor Skoulding
Independent Person:	Tina Gambell
Monitoring Officer:	Fiona McMillan, Deputy Monitoring Officer
Investigating Officer:	Jonathan Goolden, Wilkin Chapman
Clerk:	Izzi Hurst
Date:	31st October 2018

SUMMARY OF THE ALLEGATION

A complaint was raised by the Monitoring Officer about the conduct of Councillor Simon King in relation to the submission of mileage claims which appeared to have been over inflated and/or outside the Members' Allowance Scheme.

Following the pre-screening process and an initial consideration of the complaint by Fenland District Council's Conduct Committee, it was determined on 4th April 2018 that an investigation should be commissioned to consider all of the issues raised.

The investigation was carried out externally by Wilkin Chapman solicitors and concluded that there had been a breach of the code. Under Fenland District Council's Conduct Committee Procedure Rules a hearing was therefore required. The Panel was tasked with determining whether or not there has been a breach of the Code and, if so, what sanction is required.

RELEVANT SECTIONS OF THE CODE OF CONDUCT

The investigation report indicated a breach of the following obligations of the Code of Conduct:

- Rule 3.2(e): You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

- Rule 6.1(a): You must when using the resources of the Authority act in accordance with your Authority's reasonable requirements.

PROCEDURAL ISSUES DETERMINED AT THE COMMENCEMENT OF THE HEARING

Cllr King's representatives had submitted supplementary information by email at 17.07 on 29th October 2018. The supplementary information was comprised of 3 parts; part 1 contained examples of other Councils' allowance schemes, part 2 of emails disclosed in response to a request made under the Freedom of Information Act and part 3 references to tax legislation affecting members allowances. The opportunity to present information for consideration at the hearing had been made available both during the course of the investigative process as well as in responding to the draft report. Nevertheless, the Panel considered representations as to admissibility from both the Panel and the Investigating Officer and determined that the information in Part 2 would be admitted. The information in Parts 1 and 3 were not considered to be relevant to the particular facts to be determined by the Panel.

In addition to the late evidence, Cllr King's witness, Cllr Boden was unavailable to attend the hearing until approximately 2pm in view of a prior engagement on Council business. The Panel confirmed that it would be prepared to hear from Councillor Boden provided that he had arrived at the hearing by the point at which his evidence fell to be heard. Cllr Boden arrived at 1pm and was able to give evidence.

SUMMARY OF THE EVIDENCE CONSIDERED AND REPRESENTATIONS MADE

Presentation of the Complaint

The Investigating Officer ("IO") summarised the content of his investigation report and in particular drew the Panel's attention to the relevant sections of the Members' Allowances Scheme ("the Scheme"). The IO summarised his view that mileage can only be claimed where the travel has taken place wholly and exclusively in the performance of one of the 8 duties described in Part 6 of the Scheme namely for:

- A meeting of the Cabinet or any committee of the Cabinet;
- A meeting of the Council or a committee, sub-committee or other body of the Council (for which proper notice is given);
- A meeting held under joint arrangements with another authority (for which proper notice is given);
- Training and induction courses, seminars and conferences;
- Site inspection meetings (for which proper notice is given);
- Formal meetings of outside bodies as a representative of the Council;
- Undertaking civic duties as Chairman or Vice-Chairman of the Council;
- Any other duty which has been approved by the Chief Executive.

The IO identified however that a complication arises in the interpretation of Part 6.2 of the Scheme which states '*Mileage can be claimed from Councillors normal place of residence or from a subsequent appointment on Council business.*' In particular it was identified that in processing the claims the actual and shortest mileage claimed has been highlighted as being appropriate. The Scheme does not however specifically require the shortest route to

be taken but it must follow that where an excessively indirect route has been taken, that could call into question whether the journey was wholly or exclusively in pursuance of one of the 8 duties.

As part of the evidence considered, Cllr King had submitted claims for various journeys between his home address and the Council offices in March. The shortest round trip from March to Wisbech was calculated as being 22 miles. In her statement the Monitoring Officer had given examples of where significantly more miles had been claimed. Cllr King had given his view as part of the investigation that the route taken does not have to be the shortest route and IO agreed with that where, for instance, there were reasons to do with traffic and road closures required a different route to be taken. The IO also accepted that there may be some margin between Cllr King and the Council's calculations and therefore concluded that there was insufficient evidence to be able reach a conclusion in relation to those journeys. That was not to say they were all correct or incorrect but just that this fell outside the scope of the conduct investigation and was more of an internal audit function.

The IO report said that the evidence provided shows "numerous claims for travel expenses for journeys that are not covered by the scheme as they were not "undertaken wholly and exclusively in pursuance of council duties." At the hearing the investigator presented two key examples of journeys for which he considered to be outside the scheme:

- claims in respect of a meeting of Full Council on 5th November 2015;
- claim in respect of a meeting of planning committee at King's Lynn on 7th December 2015.

The evidence the IO obtained indicated that on 5th November 2015, Cllr King drove from Wisbech to Huntingdon, took the train to London, attended meetings on personal business, returned by train to Huntingdon, drove to March for the meeting and then home to Wisbech. Councillor King made 2 attempts to claim for this (pages 258 and 260 of the Bundle). The first claim was for 70 miles (Wisbech to Huntingdon return) and a return rail ticket to London and parking at the station. The claim was refused but was followed by a second claim for the round trip mileage. The IO contended that Cllr King had in effect claimed for his attendance at a Council meeting on the first occasion 'via London' and on the second occasion 'via Huntingdon'. Cllr King had confirmed during the investigative process that the London meeting was personal business and the IO therefore considered that, whilst the Scheme does not necessarily require travel via the shortest route, it was clear that most of journey on that day was not wholly and exclusively in accordance with the permitted duties.

The second claim was for attending a planning committee meeting on 7th December 2015 at King's Lynn and West Norfolk District Council in King's Lynn. In that regard, whilst the IO did not doubt that Cllr King had a proper reason to attend the meeting because during the investigation he had confirmed that he was there to represent the interests of his constituents, no evidence had been provided confirm that this duty fell within one of the permitted duties of the Scheme. He was not required to be present on behalf of Fenland District Council and neither had his attendance been approved by the Chief Executive.

The IO report concluded that “on a number of occasions these were attempts by Councillor King to claim allowances that he was not entitled to, which were at best made without due regard to the scheme and “in particular we have concluded that the repeated attempt to claim for 70 miles for the council meeting on 5 November 2015 was a deliberate and false claim.”

At the hearing the IO expressed his view that Cllr King had taken the approach on each occasion of seeing what officers would sign-off as opposed to properly applying the scheme himself. Consequently whilst it had been recognised that the scheme was not perfect it was still the responsibility of Councillors to seek to apply it properly and reasonably.

Although Cllr King did not receive the monies claimed, by submitting inaccurate claims for travel expenses and claims which were clearly outside the allowances scheme it was still an attempt in the IO’s view to misuse the resources of the council in accordance with its requirements and therefore a breach of Paragraph 6.1 of the Council’s Code of Conduct.

On this basis of this finding the IO concluded that it was reasonable to conclude that the public would expect councils and councillors to be open and transparent when using public funds and therefore the misuse of public funds would be likely to reduce public confidence. He considered this to be a serious breach of the Code of Conduct which could reasonably be regarded as diminishing the public’s confidence in Councillor King and therefore breached Paragraph 3.2(e) of the Code of Conduct by bringing his office as councillor and the council into disrepute.

Presentation of the Response

Cllr King, through his barrister, gave evidence as to the facts. He has been a Councillor since 1999 over which time he has claimed expenses for various journeys, including those from places other than his home address and they have always been paid. In 2011 there was a change to the scheme and in effect what is subsection 6.2 was inserted, prior to that it didn’t exist. He continued despite that amendment to make the same claims and that carried on until December 2015. It was clear from the forms submitted where the journeys were from and to. Prior to December 2015 no one had raised with him the question of claiming from a non-home location. The current circumstances came to light in relation to the claim for 5th November 2015. Cllr King confirmed that he was aware of the amendment to the scheme and that the purpose was a clarification that Councillors could claim from home because there is a question around the tax situation and had understood that it simply confirmed this - i.e. he understood it to be permissive. The key difference so far as he was concerned was that there had been a change in Monitoring Officer and therefore the way in which the Scheme was interpreted had changed.

In relation to the specific journeys highlighted, on 5th November 2015 Cllr King had made plans to attend personal business meetings in London. As a consequence he had intended to give apologies in respect of the meeting of Full Council (“FC Meeting”) but he was specifically asked by the then Leader to be there as it was his first Council meeting as a member of Cabinet and he didn’t feel he could refuse. The FC Meeting falls within one of the 8 duties - it is one of the most important meetings of the Council. Cllr King had several meetings in London that day, he can’t remember precisely how many but rescheduled the

later meetings to a subsequent occasion because he had to get back to attend the FC Meeting. The reason the travel was incurred therefore was so that he could attend the Council meeting which is one of the permitted duties.

There are emails in the bundle which demonstrate that Cllr King had initially disputed the non-payment stating that he considered it to be unfair however he does not recall that he contacted Carol Pilson for any further discussion after that. He could not recall either that there had been any training.

In relation to 7th December 2015, Cllr King had attended a planning committee in order to represent the interests of constituents. Prior to this nothing had been said about claiming and attending a meeting of an outside body in his capacity as a councillor and he had not received any guidance or training in relation to that. The planning meeting in question related to a particular development over the North of the border but with access from Elm High Road in Wisbech. That is Councillor King's ward and it would have had a huge impact on his ward principally in relation to traffic problems and also in relation to wisbech services such as libraries and schools. Consequently Cllr King considered that it was appropriate to attend and make representations and had actually been asked to do so by several of his constituents. Unfortunately when he went to attend the meeting in the morning he discovered that his wife had accidentally taken his car keys with her so he was forced to take a taxi to the meeting and incurred the expense of having done so. When he made that claim he believed that he was entitled to make it and he still believes that to be the case. The travel was solely and exclusively to represent constituents.

Cllr King's representative made the point that these claims should not be viewed in the same way as MP's expenses as these were not duck houses and second homes but journeys undertaken in pursuance of legitimate duties and therefore Cllr King was only recovering the expenses that had actually been incurred and nothing additional.

Points Covered During Questioning

The Panel asked questions about public perception and whether it was thought that a member of the public would view this and understand all of the complexities involved. Cllr King confirmed that he could not speak on behalf of such a diverse group of people but confirmed that he had had far more expressions of support than criticism.

Questions were asked about the length of the journeys claimed in and around Wisbech. Due to the passage of time Cllr King was not able to recall the precise detail of historic journeys save as to say that there were certainly distances that he could travel locally that would amount to 10 miles.

Councillor King was asked why, having had the Scheme explained to him, he continued to claim for 'inflated mileage'. Cllr King explained that he did not at the time of the claims or now feel that he had done anything wrong. In his view Councillors make policy and officers don't. He had followed the Scheme, not an officer's interpretation of it.

Cllr King was asked why, when other Councillors had been able to understand and comply with the Scheme, he had not. Cllr King had no idea why he had been singled out and felt that his claims were less than some others that he was aware of.

Cllr King was asked why, when the Scheme was discussed and agreed by Full Council, he had not raised any issues or sought clarification then. Cllr King confirmed that at the time he felt that when the Scheme was quite clear, he did not consider it had particularly changed since that point but that officer interpretation had. He acknowledged in hindsight that he should have pursued this with the CEO but that he was very busy at the time and it wasn't therefore a priority. Councillor King had thought that eventually common sense would prevail and the situation that had existed before would continue to be adopted.

Councillor King was asked why he had claimed for a return journey from London when he would have already been making this regardless of having to attend the FC Meeting. It was suggested to Councillor King that as he doesn't live in London it was a journey he would have had to make at some point that day. Cllr King confirmed that he would not have come back at the time he did had it not been for the FC Meeting and that is why he had claimed because that time he made the journey it was on council business.

There was some discussion of the wider claims that had been submitted and in particular examples of Cllr King having included journeys from Rugby, Leicester and to a Council meeting via his dentist in Peterborough. Cllr King confirmed that he considered then and considered now that the Monitoring Officer's interpretation was incorrect and that he had been supported in that convention by the IO who had dismissed a large proportion of his claims from the scope of the hearing.

The IO was asked to confirm whether he considered the Monitoring Officer's interpretation to be correct. The IO recognised that there is no requirement in the Scheme to take the shortest route however there is a requirement for the journeys to be wholly and exclusively for attending an approved duty. The IO stated that in his view the Scheme was actually clear. He acknowledged however that he had given Cllr King the benefit of the doubt in relation to a number of his claims where the potential anomalies have arisen as a result of the shortest route having not been taken, so 26 miles claimed instead of 22, as the policy did not specifically state to take the shortest route. Therefore he was not wholly agreeing with the manner in which the policy had been applied but he agreed with its application in regard to other claims made outside the remit of the scheme.

Councillor King confirmed when asked that it was the responsibility of Councillors and not the role of Member Services to apply the Scheme to the journeys taken.

Councillor Boden's Evidence

Councillor Boden attended as a witness of Cllr King. When questioned he confirmed that he had been asked by two or three members as Chairman of O&S to look at the Allowance Scheme but that this was after the initial investigation report in these proceedings. He admitted however that he himself has had to seek clarity from officers on its interpretation but works on the assumption that general meetings such as those with officers are not to be claimed and therefore he doesn't claim them but he considers himself to be over cautious.

Councillor Boden agreed that if he was returning from a meeting in London which did not relate to council business he would only claim from home to Fenland Hall and back again.

When asked about claiming for the cost of a taxi journey (in the circumstances described by Cllr King), he confirmed that if he had a meeting that was important to get to and he couldn't find his keys he would use the cheapest means of doing that. Also when asked, Councillor Boden confirmed that if he had a dispute with an officer's interpretation of something he would raise it with them and if that wasn't resolved he would escalate as appropriate and continue to discuss until resolved. Cllr Boden confirmed again that he would always interpret the Scheme as meaning that he could only claim from home but agreed that he is cautious because he is very careful to ensure that he does not do anything wrong. Councillor Boden said he was cautious as a self-protection mechanism and also because he would always put the public purse first.

Summing Up by IO

The IO summed up to confirm that the Scheme provides that regardless of the location of the start of the journey the travel must be wholly and exclusively for the purposes of the approved duty. This means that you can claim from home you don't need to take the shortest route but an excessively indirect route would call into the question whether the travel was wholly and exclusively for the purpose of an approved duty. The IO confirmed that he had concerns about the general pattern of claims but within the scope of the investigation there was insufficient evidence to say these amounted to breach of the Code. In relation to the London claim he was however satisfied that Cllr King was not in either London or Huntingdon on Council business and therefore the expense was not incurred wholly or exclusively for attending a Council meeting. The IO referred to Cllr Boden having said that in those circumstances he would only claim from home to March. Equally in November 2015 Cllr King was not an approved representative of the Council when he went to King's Lynn, he could and should have obtained the CEO's approval to make it an approved duty but he didn't do so. The IO acknowledged that the allowance Scheme is not perfect and quite possibly officers have applied it strictly on occasion and agreed that it should be reviewed by the Independent Panel. He made reference to Councillor Boden's evidence in which he said that he would want to be 100% sure and would want to be cautious in his approach. In contrast the IO felt that Cllr King had been incautious and had misapplied the Scheme in accordance with the reasonable requirements of Fenland District Council and had, as a consequence, brought his authority and office into disrepute.

Summing Up by Cllr King

Cllr King's representative contended that the starting point for this matter was that it is not MP expenses, duck ponds and mansions in Mayfair. Instead what the Panel were dealing with, on the advice of the IO is 2 incidents and both of those, the 5th November and the 7th December involved legitimate council business in fulfilment of Cllr King's role as a Councillor. On both of those occasions as a result of him attending those meetings in his role as a councillor he incurred expenses. On 5th November Cllr King was in London and would have been there all day and completed all of his pre-arranged business without the need to make a second trip for which he incurred additional expense had he not cut his day short to purely and simply to attend to council business. On the 7th December in relation to the large

development which potentially impacted his Ward, Cllr King attended a meeting as a Councillor and made representations on behalf of his constituents. As a result of that he incurred the expenses he claimed. Cllr King was therefore hoping to be reimbursed for expenses he had genuinely incurred.

At paragraph 6.1 of the Scheme it did not say that for the journey to be permitted the Councillor has to be a designated or formal representative, just that you were attending as a representative of the Council. Cllr King's case was that attending a meeting as a Councillor representing a ward in which you have an interest falls within that. Equally it was noted that it had already been conceded that the Scheme is intended to be permissive such that journey could be claimed from places other than home. The IO and Cllr Boden had confirmed their view that the Scheme was not clear and Carol Pilson had departed from the previous 16 year's interpretation of the Scheme in a manner which was wrong and not consistent with its permissive nature and/or the non-requirement to take the shortest route. Both journeys were made in 2015 and were challenged around 8th - 10th December 2015. Cllr King was not trying to hide anything, he filled in all of the requested boxes and gave a full explanation of the journeys taken. The Scheme however had changed inexplicably in 2015 without input from Councillors and with no training or guidance having been given.

In terms of whether or not the issues described would bring Cllr King's office or authority into disrepute, the starting point has to be that the public are fully informed and understand the facts. Those who cannot understand what is going on or who have no interest save for in the banner headlines are the ignorant and ill informed jumping to the wrong conclusions, not Cllr King. At worst this is a misunderstanding of an ambiguous and unclarified scheme.

The Views of the Independent Person

The Independent Person (IP) expressed her view that the Monitoring Officer's interpretation of the Scheme had not been inept. The Scheme had been developed prior to her appointment so she was simply taking it forward as she saw fit. She had not acted alone, Member Services check the journeys and had raised with her that Cllr King was submitting numerous claims that couldn't be substantiated; 4,495 miles, 3358 thought to be out of the scheme and 1000+ rejected outright. That is 5000 miles which is a significant number of claims which could be erroneous. Legal advice had been sought and advice from the Monitoring Officer however, considering the financial nature of the issue, misclaims are misclaims, it doesn't matter the amount of money. The IP did not consider that the Panel was there to look at other Schemes and this had been made clear from the beginning, the correct Scheme is that of Fenland District Council whether or not it needs to be amended in future. The IP questioned why Cllr King had not sought to argue when the claims were rejected despite being a councillor for so many years which she found surprising. The IP considered that the Leader's request for Cllr King to return to London was simply that, a request, not a demand. The scheme consistently says that you must use the public purse wholly or exclusively on council business or via home and the word 'only' doesn't really come into it. The IP considered that the scheme can't be much clearer and in trying to claim from a dentist visit in Peterborough or from Rugby could in no way come down to the Scheme being woolly or misinterpreted. The IP agreed with the IO's conclusion that there had been a breach of the Code of Conduct.

DECISION AND FINDINGS

The Panel confirmed that it had listened carefully to the Investigating Officer, Cllr King, his representatives and witness and the views of the Council's Independent Person.

The Panel confirmed that it had decided unanimously that it agreed with the conclusions of the investigation report that Cllr King has breached the councillor code of conduct in the following respects:

- 1) Cllr King did not use the resources of the authority in accordance with the authority's reasonable requirements in that he has made numerous claims for expenses which are outside the Members' Allowance Scheme. The Investigation report highlighted two examples of this but also found that there were *"numerous claims for travel expenses for journeys that are not covered by the Scheme as they were not undertaken wholly and exclusively in pursuance of Council duties"*. Cllr King's representative focused on responding to these two examples but did not address the report finding that *"we have concluded that on a number of occasions these were attempts by Councillor King to claim allowances that he was not entitled to, which were at best made without due regard to the scheme."* In particular the finding was that Cllr King's repeated attempts to claim 70 miles for attendance at a Council meeting on 5 November 2015 was a "deliberate and false claim". The panel's view was that trying firstly to claim for a return ticket to London along with mileage from Huntingdon to March when he was on personal business in London was clearly outside the boundaries of the scheme. They believed that a member of the public, in full possession of the relevant facts, would also have believed this to be the case and was a deliberate attempt to make a false claim.
- 2) Cllr King has, in consequence of a pattern of making numerous inflated claims for expenses also conducted himself in a manner which could reasonably be regarded as bringing both himself and the authority into disrepute. This is because the Panel feels it is clear that his conduct would diminish the public's confidence in the Council and harm its reputation as the public expect councillors to be open and transparent when using public funds and not to misuse such funds. The Panel are particularly concerned to put across their view that whilst this case does not involved large sums of money in the manner of some recent MPs expenses claims it is nonetheless public money and the same principle should be applied.
- 3) In relation to a number of elements of the complaint regarding minor differences between the direct distance between Cllr King's home in Wisbech and Fenland Hall in March and the amount claimed the panel accepted the findings of the investigator that there was insufficient evidence to conclude that any discrepancies were deliberate and therefore a breach of the code could not be established in relation to those claims.
- 4) The panel's conclusions are that Cllr King should have been well aware that some of these claims were not justified and if he had any queries or challenges to the Council's Allowance Scheme he should have raised these with officers or made attempts to have the policy clarified or changed, which he failed to do. Despite

having numerous claims turned down by officers with reasons given on why the scheme is applied in the way that it is he continued to be lacking caution in how he made claims.

The Panel confirmed that it wished to particularly highlight that it did not accept the assertions of Cllr King in relation to the actions of the Monitoring Officer and added its thanks to her for her work on this complaint in fulfilment of her role and recognised the difficult position making this complaint put her in. The Panel also expressed its thanks to the Member Services team for their work in scrutinising members' claims in order to maintain best use of the public purse.

SANCTIONS TO BE APPLIED IF ANY INCLUDING REASONS

The Panel confirmed again that it had considered the representations of all concerned regarding the form of sanction that should be imposed. The Deputy Monitoring Officer advised the Panel that they were limited by the law in terms of options available to them to address the breach.

The Panel's decision was to issue a formal Letter of Reprimand which it will copy to the Leader and Chief Executive. The Panel had considered publication of a formal notice in the newspaper but given that the press were present at the hearing and mindful of the costs that had already been incurred, it had decided not to issue a formal notice of the breach but their findings would be published on the Council's website.

RECOMMENDATIONS TO FENLAND DISTRICT COUNCIL

Whilst the Panel felt that there was sufficient information within the current Scheme to enable Councillors to understand the nature of the claims they could make, they had taken on board the comments made during the course of the hearing as to the differences in opinion regarding its interpretation. Consequently, for absolute clarity in future, the Panel made a recommendation to Fenland District Council, to be taken forward by the Interim Monitoring Officer, that the Allowance Scheme is reviewed. The revised Scheme as appropriate should be accompanied by an FAQ document giving typical examples of claims that members are likely to make and should be included as part of the member's induction programme.