

Epsom & Ewell Council refuses to explain complaints disparity

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Epsom and Ewell Borough Council has refused to answer detailed questions about the apparent disparity between its vigorous pursuit of a complaint made by Cllr **Neil Dallen** (RA Town) and its handling of complaints made against him.

Epsom and Ewell Times asked a series of specific questions concerning the Council's decision to send a complaint against Labour councillor **Chris Ames** (Labour Court) to a formal hearing, the involvement of Monitoring Officer Piero Ionta, the composition and powers of the proposed Hearing Panel and the progress of complaints against Cllr Dallen.

The Council responded within 45 minutes with a single paragraph.

A Council spokesperson said:

"As a matter of principle, the Council does not comment on allegations or complaints concerning individual elected members. Any such matters are considered in accordance with the Council's standards procedures and applicable confidentiality requirements."

That response did not answer any of EET's questions.

Many did not seek comment on the truth of allegations against individual councillors. They concerned the Council's procedures, constitutional powers, management of possible conflicts and the legal basis for conducting an entire hearing in private.

The refusal leaves unanswered who referred the complaint against Cllr Ames to a hearing, whether that person had authority to do so, whether the Council's Independent Person was consulted and why councillors involved in the original dispute have been selected to judge it.

It also leaves the Council unable or unwilling to demonstrate that complaints against Cllr Dallen are being treated with the same urgency as the complaint he made against an opposition Labour councillor.

The Dallen complaint against Ames

Cllr Dallen complained about Cllr Ames following the Strategy and Resources Committee meeting of 27 January.

Cllr Ames repeatedly questioned the secrecy surrounding an urgent decision making up to £500,000 available for work at the Rainbow Leisure Centre. The decision had been taken by officers in consultation with Cllr Dallen, who supported keeping it confidential and then chaired the meeting at which it was questioned.

Cllr Ames asked who had decided that the public interest in withholding the document outweighed the public interest in its publication.

Cllr Dallen and the Monitoring Officer repeatedly referred instead to the separate procedure for excluding the press and public if confidential information needed to be discussed during the meeting.

Cllr Ames was not asking to discuss the confidential information. His question was why the document had already been withheld and whether the required public-interest assessment had been undertaken.

The failure to identify and answer that distinction drove the confrontation.

What was really a point of order

The sequence in which the exchange deteriorated is important.

Cllr Ames first questioned Cllr Dallen's understanding of the procedures and attempted to continue asking who had made the confidentiality decision.

Cllr Dallen then brought the discussion to an end, saying:

"It does say in the Constitution that this is the chairman's meeting, and the Chairman has decided there's going to be no further discussion."

Only after that assertion did Cllr Ames call him arrogant:

“I’ve never known such an arrogant man in all my life, you’re completely out of your depth, you are completely out of your depth.”

Cllr Dallen then said:

“Councillor Ames, it is my meeting, I am Chairman of this meeting.”

Cllr Ames responded by accusing him of “more cover-up and more cover-up”.

The sequence does not excuse Cllr Ames’s descent into personal criticism. But it contradicts any simplified account in which an unprovoked insult caused the chair to assert his authority. Cllr Dallen had already described the committee as “the chairman’s meeting” and announced that questioning would cease.

Underneath the anger was an obvious procedural issue.

Cllr Dallen had participated in approving the urgent decision, supported its confidential treatment and was then chairing the committee while members questioned those actions. The appropriate issue was whether his involvement meant that he should relinquish the chair to the vice-chair for that item, allowing the questions to be considered by someone not personally connected with the decision.

Neither protagonist handled that issue properly.

Cllr Ames should have stopped, expressly raised a point of order and asked the Monitoring Officer for a ruling on whether Cllr Dallen should relinquish the chair. Instead, he personalised the dispute by attacking Cllr Dallen’s competence and character.

Cllr Dallen should have recognised that his own involvement was the subject of the questioning. Instead of characterising the committee as his meeting and using his authority to end scrutiny of his own conduct, he should have referred the point to the Monitoring Officer and invited the vice-chair to preside while it was resolved.

The Monitoring Officer should also have recognised the conflict-management question and advised on it. He did not.

The confrontation was therefore not simply a case of one councillor disrespecting a blameless chairman. It resulted from the failure of Cllr Ames, Cllr Dallen and the Council’s legal adviser to identify and deal appropriately with the procedural issue sitting in plain sight.

Only one of them is now facing a formal standards hearing.

Ames acknowledges his mistake

Cllr Ames subsequently told EET that he regretted calling Cllr Dallen arrogant. He said he should instead have raised a formal point of order challenging Cllr Dallen’s continued chairmanship of the item.

That acknowledgement goes directly to the distinction between the legitimate issue and the inappropriate way in which it was pursued.

Cllr Dallen nevertheless submitted a Code of Conduct complaint on 11 February, alleging disrespect and bullying.

Independent investigators appointed by the Council recommended that Cllr Ames be found to have breached the requirement to treat other councillors with respect.

Their report concluded that his personal criticism, allegations of a cover-up and repeated interruptions went beyond acceptable political debate.

But it also made findings which place his conduct in a more complicated context.

The investigators accepted that Cllr Ames was pursuing “a genuinely held, good faith argument” about transparency and access to information. They found that he was not engaged in a calculated or malicious attack and recognised that political speech attracts enhanced protection.

They expressly declined to decide whether his questions were legally and procedurally correct.

“It is not within the scope of this investigation to comment on any of the concerns highlighted by Councillor Ames during the meeting,” the report stated.

The investigation therefore examined how Cllr Ames challenged Cllr Dallen and the Monitoring Officer, but not whether his challenge was substantively justified.

Nor did it investigate whether Cllr Dallen’s insistence that it was the chairman’s meeting, his termination of questions about a decision in which he had participated or his failure to relinquish the chair contributed to the disorder.

The report treats respect for “the authority of the Chair” as a consideration against Cllr Ames without examining whether the authority of the chair was itself being exercised properly.

Who referred it to a hearing?

The complaint is now due to be considered by a Standards Hearing Sub-Committee on 22 September.

There is, however, a fundamental uncertainty over how it arrived there.

The Council’s scheme of delegation states:

“Determination of complaints referred by an Investigating Officer regarding alleged breaches of the councillors’ Code of Conduct shall be delegated to Hearing Panels.”

Democratic Services told Cllr Ames:

“The hearing has been convened following receipt of the Investigating Officer’s Report into the Code of Conduct complaint.”

It continued:

“In accordance with the Council’s arrangements, the determination of complaints referred by an Investigating Officer regarding alleged breaches of the Councillors’ Code of Conduct shall be delegated to a Hearing Panel.”

In this case, the Investigating Officer was the external investigator who wrote the report.

The report recommends that Cllr Ames be found in breach. It does not expressly recommend or direct that the complaint be referred to a Hearing Panel.

That distinction may be important.

The Council’s Constitution gives the Monitoring Officer broad authority over Code of Conduct matters except for decisions reserved to a Hearing Panel or another decision-making body. But the specific delegation to Hearing Panels appears to apply to complaints “referred by an Investigating Officer”.

If those words establish a mandatory gateway, the question is whether the external investigator actually made such a referral. The Monitoring Officer cannot necessarily substitute himself for the Investigating Officer or silently supply a procedural step which the Constitution assigns to someone else.

There may be an answer. The Council might argue that a report recommending a finding of breach necessarily constitutes an implied referral. It might identify a separate written decision by the external investigator which has not been included in the report supplied to Cllr Ames.

But the Council has declined to say.

EET asked who made the referral, when it was made, where it was recorded and under which constitutional power. The Council’s blanket response does not identify any decision or decision-maker.

This was not a request to prejudge the allegation. It was a request for proof that the body proposing to judge it had been properly convened.

Report arrived after hearing invitation

The procedural uncertainty is compounded by the Council’s communications with Cllr Ames.

On 7 August, Democratic Services sent an invitation to the proposed Hearing Panel. It did not identify Cllr Ames as the subject member in the body of the invitation.

When he replied that he did not know what the hearing concerned and would not attend, Democratic Services responded:

“For the avoidance of doubt, you are the subject of the Standards Hearing Sub-Committee.”

Cllr Ames says that was the first time he had been told expressly that the complaint was proceeding to a hearing.

He had not received the final investigation report. The investigator subsequently attributed this to a “communication breakdown” between himself and the Council’s legal services team.

Instead of acknowledging that failure and apologising, the Council adopted a tone which implied that Cllr Ames should already have understood the position.

Cllr Ames has asked who decided to refer the case, on whose recommendation and under what policy. No substantive answer is contained in the correspondence supplied to EET.

Monitoring Officer was involved in original dispute

The position of Monitoring Officer Piero Ionta creates a separate concern.

Mr Ionta attended the January meeting and gave advice supporting Cllr Dallen during the disputed exchange. It was the adequacy and correctness of that advice which Cllr Ames was challenging.

The Monitoring Officer also failed to identify and advise upon the underlying question of whether Cllr Dallen should relinquish the chair while his own part in the urgent decision was being questioned.

The independent investigation was subsequently commissioned on the Monitoring Officer’s behalf.

Employing an external investigator does not necessarily remove an apparent conflict if the Monitoring Officer defines the remit, supplies the evidence, receives the report, manages the procedure and controls what happens next.

The external report placed the legal and procedural correctness of the Monitoring Officer’s advice outside its scope. It then recommended a finding against the councillor who challenged that advice.

EET asked why Mr Ionta did not withdraw from managing the complaint and whether an unconnected monitoring officer from another authority had been considered. These are questions about institutional impartiality, not the merits of the complaint against Cllr Ames.

The Council declined to answer them.

A participant proposed as judge

The proposed panel consists of Cllrs **John Beckett** (RA Auriol), **Alan Williamson** (RA West Ewell) and **Julian Freeman** (LibDem College), with Cllr **Rachel King** (RA Town) named as reserve.

Cllr Beckett is scheduled to chair it.

But Cllr Beckett participated in the January exchange which the panel will be required to assess.

When Cllr Ames questioned why the Rainbow information had been withheld, Cllr Beckett defended confidentiality on the basis that private companies would not want their financial information published. Cllr Dallen immediately told him that he was right.

Cllr Beckett's intervention is quoted in the independent investigation report.

This does not prove that he has predetermined whether Cllr Ames breached the Code. Nevertheless, appointing someone who participated in the underlying dispute to chair the subsequent disciplinary hearing creates an obvious appearance problem.

EET asked whether all panel members had confirmed that they had not predetermined the complaint and why Cllr Beckett had been selected despite his involvement.

The Council declined to answer.

Hearing behind closed doors

The Council has announced in advance that the hearing will not be webcast and that "all evidence shall be received and heard in exempt session".

Some evidence about individual councillors may lawfully require protection. It does not follow that the whole hearing must be secret.

The incident occurred during a public meeting recorded on the Council's webcast. The complaint, the investigation and the proposed hearing concern the conduct of elected representatives performing public duties.

The Council has not identified which statutory exemption justifies excluding the public from the entire proceeding or whether the required public-interest assessment has been undertaken.

It has also declined to identify the sanctions constitutionally available to the panel if it finds a breach.

The Council's response invokes "applicable confidentiality requirements" without identifying what those requirements are or explaining why they prevent answers about jurisdiction, procedure and panel powers.

Complaints against Dallen

The contrast with complaints against Cllr Dallen is increasingly difficult to ignore.

Cllr Ames says that he made a complaint against Cllr Dallen arising from the same January meeting. Among other matters, it challenged Cllr Dallen's use of the chair to prevent continued scrutiny of a decision in which he had participated.

That complaint was rejected without an equivalent external investigation.

A complaint from a member of the public against Cllr Dallen was also reportedly rejected.

Cllr Ames has also made a complaint concerning Cllr Dallen's reported participation in a panel dealing with a complaint against the Chief Executive about the Rainbow Leisure Centre urgent decision.

His case is that Cllr Dallen's direct involvement in approving that decision created a conflict when he subsequently helped consider a complaint about the Chief Executive's account of it.

EET does not suggest that any complaint against Cllr Dallen must be upheld. Different complaints can properly receive different assessments and outcomes.

The issue is whether they have been examined with the same willingness to commit time and external resources as Cllr Dallen's complaint against Cllr Ames.

The Council could have answered that concern by publishing anonymised information about receipt dates, assessment dates, reasons for decisions and outcomes. Instead, it has invoked a blanket principle of silence.

Confidentiality or avoidance?

There are legitimate reasons for protecting information about unresolved complaints. Premature disclosure can damage reputations, discourage witnesses and undermine a fair investigation.

But confidentiality should protect the integrity of a process, not conceal whether a proper process exists.

EET did not ask the Council to decide publicly whether either Cllr Ames or Cllr Dallen had breached the Code. It asked:

- who exercised the power to refer the Ames complaint to a hearing;
- where that referral was recorded;
- whether the Independent Person was consulted;
- how the Monitoring Officer's involvement was managed;
- why a participant in the original incident was selected to chair the hearing;
- why the whole hearing was designated private in advance;

- what powers and sanctions the panel possesses; and
- how the Council ensures that complaints are prioritised consistently.

None of those questions required the Council to reveal confidential witness evidence or prejudge an allegation.

A response sent within 45 minutes which simply restates a policy of not commenting creates the impression that the Council did not attempt to distinguish questions about confidential merits from questions about public governance.

Standards or selective discipline?

The case against Cllr Ames is not fabricated. His language became personal and intemperate. An independent investigator has provided reasoned grounds for finding that it breached the Code.

But that is only one side of what happened.

Before Cllr Ames called Cllr Dallen arrogant, the chair had already declared that it was “the chairman’s meeting” and terminated further discussion of an issue involving his own earlier decision. After the insult, he intensified the same assertion with the words: “It is my meeting.”

Cllr Ames failed to convert his legitimate concern into the formal point of order it should have been. Cllr Dallen failed to recognise that the proper response was to obtain a ruling and consider relinquishing the chair to the vice-chair. The Monitoring Officer failed to guide either of them towards that procedure.

Yet only Cllr Ames’s failure has been externally investigated and sent towards a disciplinary hearing.

The legitimacy of any finding against him depends upon the legitimacy of the process used to determine it.

A Council cannot demand meticulous respect for standards from an opposition councillor while treating its own compliance with constitutional gateways, impartial adjudication and transparent decision-making as matters upon which it will say nothing.

Nor can confidentiality be allowed to make unequal treatment impossible to test.

Different complaints can properly have different outcomes. A pattern of different outcomes does not prove political bias. But where a complaint by Cllr Dallen against a Labour opposition councillor receives an external investigation and formal hearing while complaints against Cllr Dallen are rejected or apparently progress no further, the Council must provide enough procedural information to demonstrate that the difference results from evidence and established criteria rather than identity or influence.

The unanswered question is no longer merely whether Cllr Ames spoke disrespectfully to Cllr Dallen. It is whether EEBC has constructed a fair and constitutionally valid process for deciding that question, while applying the same standards to the person whose conduct and chairmanship provoked the dispute.

By refusing to answer, the Council has not protected public confidence in its standards regime. It has deepened the doubts surrounding it.

Sam Jones - Reporter



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