

# COMPLAINT AGAINST CLLR HENRY BATCHELOR AND CLLR CLAIRE DAUNTON

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## INVESTIGATION REPORT

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### Introduction

1. I have been appointed by the Monitoring Officer of South Cambridgeshire District Council (“the Council”) to investigate a complaint against Cllrs Henry Batchelor and Claire Daunton.
2. I am a barrister and specialise in local government law. I am an experienced investigator of complaints against councillors.

### The complaint

3. The complaint (dated 13 January 2022) has been submitted by Daniel Fulton, who is a director of Fews Lane Consortium Ltd. In summary, Mr Fulton alleges that both councillors attended a meeting of the Council’s Planning Committee on 29 September 2021 and voted on an item in which they had disclosable pecuniary interests without either declaring those interests to the meeting or on having included them on their registers of interests.

### The Code

4. The Council has adopted a Code of Conduct for Members (“the Code”). The relevant section of the Code reads as follows:

4.2 *You must:*

- 4.2.1 *comply with the statutory requirements to register, disclose and withdraw from participating in respect of any matter in which you have a disclosable pecuniary interest*
- 4.2.2 *ensure that your register of interests is kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any change in respect of your disclosable pecuniary interests*
- 4.2.3 *make a verbal declaration of the existence and nature of any disclosable pecuniary interest at any meeting at which you are present at which an item of business which affects or relates to the subject matter of that interest is under consideration, at or before the*

*consideration of the item of business or as soon as the interest becomes apparent*

4.2.4 *Where you have a disclosable pecuniary interest, whether the interest is registered or not, you must not (unless you have obtained a dispensation from the Authority's Monitoring Officer)*

*(i) participate, or participate further, in any discussion of the matter at the meeting; or*

*(ii) remain in the meeting room whilst the matter is being debated or participate in any vote taken on the matter at the meeting.*

5. Paragraph 4.1 of the Code adopts the statutory definition of a disclosable pecuniary interest which is set out in the Schedule to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. Insofar as material to this complaint, the relevant definitions are:

<i>Employment, office, trade or vocation</i>	<i>Any employment, office, trade, profession or vocation carried on for profit or gain.</i>
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#### Investigation process

6. As part of this investigation, I considered a number of documents, including:

- (a) Mr Fulton's complaint, submitted by email dated 13 January 2022;
- (b) documents prepared for, and arising from, the Planning Committee meeting on 29 September 2021, which are available on the Council's website;
- (c) emails sent by both councillors on 27 October 2021 to Democratic Services asking for their registers of interests to be updated;
- (d) both councillors' registers of interests;
- (e) an email from [REDACTED] of Cambridgeshire Police dated 24 February 2022;
- (f) written responses to the complaint from both councillors dated 10 March 2022 (Cllr Batchelor) and 20 March 2022 (Cllr Daunton);
- (g) email correspondence between Mr Fulton and the Monitoring Officer between 11-16 March 2022.

7. Given the narrow issues raised by the complaint, I did not consider it necessary to speak with either Mr Fulton or the councillors. I invited both councillors and Mr Fulton to submit written comments to me. I received responses from both councillors but did not hear back from Mr Fulton before distributing my draft report to all parties.
8. Having submitted my draft report for comment, I received a response from Cllr Daunton confirming she had nothing to add. I did not hear from Cllr Batchelor.
9. I received two emails from Mr Fulton. He stated that he agreed with my provisional conclusions, in particular that neither councillor had acted with the intention of making any personal gain from their conduct. However, the majority of Mr Fulton's responses were concerned with matters beyond the scope of this investigation, in particular regarding the conduct of officers. I will not comment on these matters any further.

#### Findings

10. Having considered the evidence, I make the following findings of fact.
11. Cllr Batchelor, as well as being a member of the Council, was elected to Cambridgeshire County Council ("the County Council") on 4 May 2017. Cllr Daunton was also elected to the County Council, in her case on 6 May 2021. This is a matter of public record.
12. Both councillors attended and participated in a meeting of the Council's Planning Committee on 29 September 2021. Cllr Batchelor did so as vice-chair of the committee; Cllr Daunton as a substitute.
13. Item 3 on the agenda was for members to make declarations of interests.
14. Item 5 on the agenda was an application for planning permission concerning land at the Retreat, Few's Lane, Longstanton. The officer's report for this item explained that the applicant had appealed to the Planning Inspectorate after the Council had failed to determine the application within the relevant statutory time limits. In a supplementary report, members were informed that the Few's Lane Consortium had submitted a costs application as part of the appeal. The report explained:

*"Within the costs application, FLC states it is seeking the costs of obtaining expert evidence to address the highway safety assessment that should have been conducted by the local highway authority as a statutory consultee.*

*The Council needs to respond to this by the end of the 30th September 2021. Officers are seeking delegated authority from members to issue a response to the costs application for the Inspectorate to consider.”*

15. I should point out that the supplementary report stated that the application had been made against the Council. This was wrong: it had been made against the County Council.

16. Both councillors declared a non-pecuniary interest in this item because they had attended an earlier Planning Committee meeting to consider it which had been abandoned due to IT problems. Neither declared a disclosable pecuniary interest. At the time of the meeting, neither councillor had declared their membership of the County Council on their register of interests.

17. The minutes of the meeting record, insofar as material:

*“By seven votes to three with one abstention, the Planning Committee gave officers delegated authority to submit a response to the Planning Inspectorate in relation to the costs application dated 23 September 2021 made against the Local Highways Authority by Fewes Lane Consortium for consideration on behalf of South Cambridgeshire District Council.*

*(Councillors Henry Batchelor, Cahn, Daunton, Hawkins, Heylings, Rippeth and Wilson voted in favour while Councillors Roberts, Heather Williams and Richard Williams voted against. Councillor Peter Fane did not vote)”*

18. Mr Fulton submitted his complaint by email on 13 January 2022. He wrote:

*“On 29 September 2021, Cllr Henry Batchelor and Cllr Claire Daunton committed offences under section 34(1)(b) of the Localism Act 2011 by voting to instruct officers of the district council to respond to a costs application against Cambridgeshire County Council.*

*Both Cllr Henry Batchelor and Cllr Claire Daunton had a disclosable pecuniary interest in the matter as both hold office as members of Cambridgeshire County Council, a vocation which they carry out for profit or gain.*

*The disclosable pecuniary interest did not appear on the members’ registers of interests at the time they voted on the matter in question.”*

19. As Mr Fulton correctly noted, a councillor who participates in the discussion of an item of business, or votes on an item, in which they have a disclosable pecuniary interest commits a criminal offence, contrary to section 34(1)(b) of the Localism Act 2011.

20. Given that Mr Fulton had made an allegation of a criminal offence, the complaint was referred to Cambridgeshire Police for investigation. Both councillors were interviewed under caution in February 2022. In an email to the Monitoring Officer, [REDACTED] confirmed that:

*"I will be making the decision to take no further police action.*

*Happy to discuss further, both 'admit' (term used neutrally) to the facts however this was more over unawareness, and no intention to gain. They also raised that the vote was a hypothetical one about a view, which they raised as potentially meaning that this vote was not relevant to the rules but this was more of a question too. Either way, it would not affect our decision. Furthermore, you have taken appropriate and proportionate action which also has addressed the matter, which I am obliged to consider. I am satisfied as a Senior Investigating Officer that the work of SCDC and Cambs Police has been appropriate in these circumstances."*

21. Once Cambridgeshire Police had concluded their investigation, the complaint was put to both councillors for their response.

22. Cllr Batchelor responded on 10 March 2022. In summary, he accepted both that he was a member of the County Council on the date of the Planning Committee meeting and that he had not declared that membership on his register of interests. He explained:

*"The reason for this is it never occurred to me that I needed to for that particular item. The decision in question was that the committee was being asked to empower a planning officer to respond to a cost application against the county council. The committee wasn't being asked to make a decision on the cost application, but simply empowering an officer to respond to the claim. The officer wasn't being instructed to respond in a certain way, but only to respond as they saw fit.*

*I also didn't declare an interest in this item as it had no financial implication for myself. As a county councillor I receive an allowance. This doesn't change and is the same every month. The outcome of this cost application, which was ultimately refused, would have had no impact on my councillor's allowance."*

23. He pointed out that it “*is also very clear public knowledge that I am a county councillor*” and that he had since updated his register of interests. I have seen an email from Cllr Batchelor to Democratic Services, dated 27 October 2021, in which he asked for his register to be updated accordingly. I can confirm that his register of interest now records his membership of the County Council.

24. Cllr Daunton responded on 20 March 2022. Her response was along similar lines. She accepted that she had not declared her membership of the County Council on her register of interests. She added:

*“I can state that at the start and during the course of that meeting it did not come into my mind that I needed to declare an interest in respect of my county council role. I understood that the relevant action at that meeting was to give authority to an officer to make a decision relating to an application for costs: it was for the officer to take action on the claim.*

*I had no personal financial interest in the committee's instruction to the officer: this instruction had no effect on the allowance I receive as a county councillor.”*

Likewise, on 27 October 2021, Cllr Daunton requested that her register of interests be updated and it now records her membership of the County Council as well.

25. Ultimately, the costs application against the County Council was dismissed by the Planning Inspector. I have not seen a copy of the Council’s response (if any was submitted) to the application.

### Assessment

26. Did the councillors have a disclosable pecuniary interest in this item as a result of their membership of the County Council? The answer to that question will depend on two issues:

(a) whether that membership amounted to “*an office ... carried on for profit or gain*”; and

(b) if it did, whether this particular item of business directly related to the County Council.

### *Office for profit or gain*

27. The [guidance](#) to the Local Government Association’s Model Code of Conduct takes the view that membership of another local authority constitutes a disclosable pecuniary interest:

***“Does ‘office carried on for profit or gain’ include allowances I may receive from another local authority I sit on?”***

*If you receive allowances which are treated as taxable income rather than simply being pure reimbursement of expenses, say, then they do need to be registered and declared as appropriate.*

*Reimbursement of expenses is separately covered by the DPI category ‘sponsorship’ and makes clear that it excludes the need to register or declare reimbursement of expenses from one’s own authority. However, that does not exclude any allowances received from another authority. This is supported by a letter written by the then Minister Brandon Lewis to Desmond Swayne MP in 2013 when this issue was raised with Government which said: “a member being in receipt of taxable members’ allowances may be considered to give rise to a disclosable pecuniary interest under the subject of ‘Employment, office, trade or vocation’ set out in the regulations.*

*That means that any member in receipt of taxable allowances from another authority would have to register such as a DPI. For example, a parish councillor who is also a district councillor and is in receipt of taxable allowances from the district would need to register that fact.”*

28. In this case, as members of the County Council, both councillors received the basic allowance payable to all members of the County Council. Additionally, Cllr Batchelor, as the chair of the Planning Committee, received an additional special responsibility allowance. These allowances are taxable.
29. However, for my part, I am doubtful that the LGA’s advice is correct. The County Council’s Independent Review Panel issued its report on members’ allowances in June 2021. Section 3.2 of that report made clear that the purpose of paying a members’ allowance is to provide “reasonable compensation to councillors for expenses they incur and time they commit in relation to their role, not payment for their work” (*emphasis* in original) and emphasised that “[r]emuneration should not be an incentive for service as a councillor”. When seen in this light, it difficult to construe the allowances paid to these councillors as a “gain” or “profit”.
30. Nonetheless, the LGA is an authoritative source of guidance in the field of local government standards and so, for the purposes of this investigation, I will assume that it is correct – and therefore that the councillors’ membership of the County Council did constitute a disclosable pecuniary interest.

*Whether the item was directly related to the County Council*

31. Mr Fulton's complaint is about the councillors' participation on the vote on whether to delegate authority to planning officers to file a response to a costs application which had been made against the County Council.
32. In response, both councillors have pointed out that the motion to grant delegated authority was in neutral terms: it merely empowered officers to submit a response on behalf of the Council; it was not the Council's application; and it did not instruct the officers on what position they should take in that response.
33. The LGA's guidance offers the following advice on this question:

***“When does a Disclosable Pecuniary Interest arise?”***

*The Localism Act uses the phrase ‘you have a DPI in any matter...’*

*This wording has led to some confusion as to what circumstances would lead to the need to declare a DPI. The Explanatory Notes to the Localism Act say that section 31 of the Act “requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest), at a meeting or if acting alone, where any matter to be considered **relates to** their interest. ... It prohibits a member from participating in discussion or voting on any matter **relating to** their interest or, if acting alone, from taking any steps in relation to the matter (subject to any dispensations).” [our emphasis].*

*This means you have a Disclosable Pecuniary Interest (DPI) in a matter when the matter being discussed directly relates to your registered interest or that of your partner, rather than simply affecting it.*

*For example, if you have registered 1 Acacia Avenue as your address, you would have a DPI if you put in a planning application for 1 Acacia Avenue, or if the whole of Acacia Avenue was being considered for a Resident Parking Zone.*

*You would not have a DPI if 3 Acacia Avenue had put in a planning application as the matter does not directly relate to your registered interest. You may however have a non-registerable interest ... as the application may indirectly affect your property.”*

***“What is the difference between ‘relates to’ and ‘affects’?”***



*Something relates to your interest if it is directly about it. For example, the matter being discussed is an application about a particular property in which you or somebody associated with you or an outside body you have registered has a financial interest.*

*'Affects' means the matter is not directly about that interest but nevertheless the matter has clear implications for the interest – for example, it is a planning application for a neighbouring property which will result in it overshadowing your property. An interest can of course affect you, your family or close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, an interest would need to be declared in both situations."*

34. When looked at in light of the LGA's guidance, it seems clear to me that this item of business did relate to the County Council. The item concerned a costs application which had been made against the County Council and therefore was directly about it. While I appreciate the point made by the councillors – that they did not instruct officers to take any position in relation to the costs application – this goes to the seriousness of the breach rather than the question of whether the interest was engaged.
35. Accordingly I conclude that both councillors failed to both register and declare their disclosable pecuniary interests in this item of business which constituted a **breach of paragraph 4.2 of the Code**.

#### Seriousness

36. As set out above, I have found that there has been a breach of the Code. However, in fairness to both councillors, and to assist the Monitoring Officer in making a decision as to next steps, I consider that it is important to make findings which are relevant to the seriousness of the breach. Having considered the evidence, I am satisfied that:
- (a) the breaches committed by both councillors were the result of a genuine oversight rather than a deliberate disregard of the Code;
  - (b) it is a matter of public record that both councillors were also members of the County Council;
  - (c) neither councillor benefitted personally in any way from the breaches and neither committed the breach with an intention to secure a gain for themselves or anyone else;

- (d) the resolution which both councillors voted to support was phrased in neutral terms and did not instruct officers to take a particular position in the Council's response to the costs application against the County Council;
- (e) both councillors quickly remedied the breaches by updating their registers of interests;
- (f) subsequent to the meeting, both councillors have been open and transparent about their conduct and have co-operated fully with this (and the police's) investigation.

Next steps

37. My role is limited to making findings and recommendation. A decision as to what further action should follow lies with the Monitoring Officer.

**Matt Lewin**  
Cornerstone Barristers

28 April 2022