

# TONBRIDGE & MALLING BOROUGH COUNCIL



## EXECUTIVE SERVICES

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**Chief Executive**

Julie Beilby BSc (Hons) MBA

Gibson Building  
Gibson Drive  
Kings Hill, West Malling  
Kent ME19 4LZ  
West Malling (01732) 844522

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To: MEMBERS OF THE COUNCIL

Dear Sir/Madam

I hereby summon you to attend a meeting of the Tonbridge and Malling Borough Council which will be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Tuesday, 16th February, 2016 at 7.30 pm, when the following business is proposed to be transacted:-

### PART 1 - PUBLIC

- |    |  |         |
|----|--|---------|
| 1. | Apologies for absence  | 5 - 6   |
| 2. | Declarations of interest   | 7 - 8   |
|    | To declare any interests in respect of recommended items                                     |         |
| 3. | Minutes  | 9 - 14  |
|    | To confirm as a correct record the Minutes of the meeting of Council held on 3 November 2015 |         |
| 4. | Mayor's Announcements  | 15 - 16 |
| 5. | Questions from the public pursuant to Council Procedure Rule No 5.6                          | 17 - 18 |
| 6. | Questions from Members pursuant to Council Procedure Rule No 5.5                             | 19 - 20 |
| 7. | Petition in Respect of Proposed Introduction of Car Parking Charges in West Malling          | 21 - 24 |
| 8. | Leader's Announcements   | 25 - 26 |

9. Reports, Minutes and Recommendations 27 - 28

To receive and consider reports, minutes and recommendations from the meetings of the Cabinet and Committees set out in the Minute Book and officers' reports on any matters arising from them, and to receive questions and answers on any of those reports. Matters for recommendation to the Council are indicated below at items 10 to 18.

10. Savings and Transformation Strategy 29 - 40

Item CB 15/64 referred from Cabinet minutes of 17 November 2015

11. Localism Act - Pay Policy 41 - 52

Item GP 16/4 referred from General Purposes Committee minutes of 1 February 2015

12. Setting the Budget for 2016/17

Item referred from Cabinet minutes of 11 February 2016

13. Setting the Council Tax 2016/17

Item referred from Cabinet minutes of 11 February 2016

14. Savings and Transformation Strategy Update

Item referred from Cabinet minutes of 11 February 2016

15. Equality Policy Statement and Objectives 2016-20

Item referred from Cabinet minutes of 11 February 2016

16. Treasury Management and Annual Investment Strategy  
2016/17

Item referred from Cabinet minutes of 11 February 2016

17. Technical Changes to Council Tax

Item referred from Cabinet minutes of 11 February 2016

18. Draft Safeguarding Policy

Item referred from Cabinet minutes of 11 February 2016

19. Recommendation to Council following Hearing of Joint Standards Committee on 4 January 2016 53 - 114

20. Appointments to Outside Bodies 115 - 116

To authorise the Common Seal of the Council to be affixed to any Contract, Minute, Notice or other document requiring the same.

JULIE BEILBY  
Chief Executive  
Monday, 8 February 2016

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Apologies for absence

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# Agenda Item 2

Declarations of interest

To declare any interests in respect of recommended items.

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## TONBRIDGE AND MALLING BOROUGH COUNCIL

### COUNCIL MEETING

Tuesday, 3rd November, 2015

At the meeting of the Tonbridge and Malling Borough Council held at Civic Suite, Gibson Building, Kings Hill, West Malling on Tuesday, 3rd November, 2015

**Present:** His Worship the Mayor (Councillor O C Baldock), the Deputy Mayor (Councillor M R Rhodes), Cllr Mrs J A Anderson, Cllr Ms J A Atkinson, Cllr M A C Balfour, Cllr Mrs S M Barker, Cllr M C Base, Cllr Mrs P A Bates, Cllr Mrs S Bell, Cllr R P Betts, Cllr T Bishop, Cllr P F Bolt, Cllr J L Botten, Cllr V M C Branson, Cllr Mrs B A Brown, Cllr T I B Cannon, Cllr M A Coffin, Cllr D J Cure, Cllr R W Dalton, Cllr M O Davis, Cllr Mrs T Dean, Cllr T Edmondston-Low, Cllr B T M Elks, Cllr Mrs S M Hall, Cllr S M Hammond, Cllr Mrs M F Heslop, Cllr N J Heslop, Cllr S R J Jessel, Cllr D Keeley, Cllr Mrs F A Kemp, Cllr S M King, Cllr D Lettington, Cllr Mrs S L Luck, Cllr B J Luker, Cllr D Markham, Cllr P J Montague, Cllr Mrs A S Oakley, Cllr L J O'Toole, Cllr M Parry-Waller, Cllr S C Perry, Cllr H S Rogers, Cllr R V Roud, Cllr Miss J L Sergison, Cllr T B Shaw, Cllr Miss S O Shrubsole, Cllr C P Smith, Cllr Ms S V Spence, Cllr A K Sullivan, Cllr M Taylor, Cllr F G Tombolis, Cllr B W Walker and Cllr T C Walker

Apologies for absence were received from Councillors D A S Davis and R D Lancaster

### PART 1 - PUBLIC

#### **C 15/65 DECLARATIONS OF INTEREST**

There were no declarations of interest made in accordance with the Code of Conduct.

#### **C 15/66 MINUTES**

**RESOLVED:** That the Minutes of the proceedings of the ordinary meeting of the Council held on 14 July 2015 and of the two special meetings held on 14 July 2015 be approved as correct records and signed by the Mayor.

#### **C 15/67 MAYOR'S ANNOUNCEMENTS**

The Mayor reported on his attendance at a number of events since the last meeting, notably the German exchange visit from Heusenstamm, the Royal Naval Association Sea Service at Maidstone, the meeting with visiting Maasai warriors at Tonbridge School, the start of the annual

Vintage Motor Cycle Club West Kent Run from Aylesford Priory and the World War II Service at Tonbridge Memorial Gardens. He thanked all who had taken part in the Council team at the Dragon Boat Race during the Heritage Weekend and Fidelity International for running the Discovery Day Disabled Sports Day at the Angel Centre. A particularly memorable event was the Young Cricket Leaders presentation at Lords Cricket Ground.

The Mayor thanked everyone who had attended the Big Band Bash at Hildenborough Village Hall or made donations and indicated that £1,205 had been raised for his charities. He reminded Members of some future events including the switching on of the Tonbridge Christmas lights on 22 November, the Oast Theatre performance on 23 February, the quiz at Hadlow College on 27 February, the Charity Dinner at The View, West Kent College on 21 April and a Buckmore Park Karting evening with charity auction on a date to be confirmed.

The Mayor was then presented with a copy of the Bible by Mr Peter Turner of Gideons International.

Members were advised that Tonbridge and Malling had become the first council in Kent to achieve the National Health and Wellbeing Charter, known as the Kent Healthy Business Award, in recognition of its commitment to the health and well-being of its staff. The Cabinet Member for Community Services, Councillor Maria Heslop, presented the trophy to the Mayor who congratulated everyone involved.

**C 15/68 QUESTIONS FROM THE PUBLIC PURSUANT TO COUNCIL PROCEDURE RULE NO 5.6**

No questions were received from members of the public pursuant to Council Procedure Rule No 5.6.

**C 15/69 QUESTIONS FROM MEMBERS PURSUANT TO COUNCIL PROCEDURE RULE NO 5.5**

No questions were received from Members pursuant to Council Procedure Rule No 5.5.

**C 15/70 LEADER'S ANNOUNCEMENTS**

The Leader advised that the Council would be represented at a number of Remembrance services throughout the Borough, the Mayor attending those at Tonbridge and West Malling, the Deputy Mayor at Snodland and Councillor Mrs S Barker representing the Borough Council at Kings Hill. The Chief Executive and Leader would also be at Tonbridge and both were attending a service at the Garden of Honour at the RBLI Village in the afternoon. The Leader, together with the Deputy Mayor and Chief Executive had attended the official opening of the Garden of Honour at Aylesford by Lieutenant-General Andrew Gregory, Chief of

Defence Personnel. In his address the latter had commended the Borough Council for the way in which it was fulfilling the Armed Services covenant signed by the Leader and the Chief Executive of the RBLI just over three years ago.

The Leader referred to the financial challenges facing the Borough Council, a position which was not dissimilar across the public sector. Three years ago he had predicted that Revenue Support Grant would be phased out by 2017/18 and indicated that this would now be the case with the Chancellor's recent announcement that local authorities would retain all business rate income collected. Reference was made to the significant savings needing to be achieved by the Council in its financial planning regardless of future financial arrangements. The Leader suggested that clarity was required as to how business rate income would be distributed in replacing government grant.

Members were reminded that over the 10 year life of the Medium Term Financial Strategy (MTFS), the Council was likely to have to deliver savings of at least £1.4 million in its base budget, although the situation could be more severe depending on what happened nationally. This represented a major task when net revenue expenditure was approximately £13 million and the Council had already delivered £2.8 million in savings over the last four to five years.

The Leader indicated that he and Councillor Coffin had been working with the Management Team to develop a savings and transformation strategy to support the MTFS. This would provide a framework for guidance on achievement of the required savings and additional income and would be reported to a meeting of the Cabinet on 17 November 2015.

Despite the challenges faced, the Council's financial decisions and record continued to be recognised by the Auditors. The Leader quoted the most recent Annual Audit Letter for the year ending March 2015 in which Grant Thornton concluded that the Council continued to have an effective framework of financial control and robust arrangements for financial governance together with a structured approach to addressing financial pressures within a strong medium term planning framework and a history of achieving planned savings. Going forward the Council recognised that a wider approach to transformation would be required and was preparing a revised corporate strategy to address this. Members recorded their thanks to the Director of Finance and Transformation and her team for their advice to the Council.

The Leader referred to his update to Members on the proposed response from the Borough Council to the government's request to take Syrian migrants over the next five years. This would be considered by the Housing and Environment Services Advisory Board at its meeting on 9 November. In the role of Housing Authority and as part of the public sector effort, the Leader had given a commitment that the Council would

play its part in the overall effort to meet the needs of refugees. Officers had accordingly been working with partners in a strategic approach which recognised the agreement by all Kent Council leaders to coordinate efforts.

The Leader stated that the financial challenges ought not to mask the high standards set by the Council in service delivery and what was being achieved for local communities. He illustrated this by describing some of the notable successes since the last meeting in July. This included news from the Leisure Trust that Tonbridge Swimming Pool had been awarded 'Outstanding' following a recent Quest Assessment, there being over 700 Quest accredited sites in the UK with Tonbridge Pool only the sixth to achieve this standard.

He was pleased to report that there were now two park runs in the Borough with the launch of the Malling Park run. The previous Saturday, both runs had attracted a total of 518 runners, (353 at Tonbridge and 165 at Malling) in the context of 2,500 runners across the county. Participation was free and there was no ongoing cost to the Borough Council. The success of these events was largely dependent on volunteers and both park runs had the benefit of champions in Anthony Lester at Tonbridge and Tracy Brooks at Leybourne. Reference was also made to the inspiration and encouragement from the Council and tribute paid to Donna Carr, the Parkrun Ambassador, the Cabinet Member for Community Services, Maria Heslop, in driving the project and Beverley Emmerson, the Council's Sports Development Officer.

The Leader advised that Haysden Country Park had now received the Green Flag Award for 10 consecutive years. The award by Keep Britain Tidy was the benchmark national standard for parks and green spaces in the UK and achievement for 10 years running was testament to the rangers and staff involved, volunteer groups, wildlife specialists, partnership organisations and visitors for their continuing efforts to help the Council improve and develop the park.

Finally, the Leader reported that for the fourth year running, the Council had been awarded the Community Animal Welfare Footprints Gold Award for Stray Dog Services from the Royal Society for the Protection of Animals. This placed the Council in the top 15% of local authorities nationally for achieving high standards when dealing with stray dogs. The award reflected the Council's commitment to dog welfare over and above the statutory requirements and also recognised the personal and professional commitment and dedication of Tonbridge and Malling's Dog Warden, Lorraine Baseden. It was therefore agreed to convey to her the Council's congratulations and appreciation.

**C 15/71 GAMBLING ACT 2005 - REVISED STATEMENT OF POLICY**

Item LA 15/89 referred from Licensing and Appeals Committee minutes of 22 September 2015

**RESOLVED:** That the recommendations at Minute LA 15/89 be approved.

**C 15/72 TREASURY MANAGEMENT MID-YEAR REVIEW 2015/16**

Item CB 15/52 referred from Cabinet minutes of 7 October 2015

**RESOLVED:** That the recommendations at Minute CB 15/52 be approved.

**C 15/73 RECOMMENDATIONS TO COUNCIL FOLLOWING HEARING OF JOINT STANDARDS COMMITTEE ON 12 OCTOBER 2015**

Consideration was given to the report of the Director of Central Services and Monitoring Officer regarding the recommendations of the Hearing Panel of the Joint Standards Committee which had met on 12 October 2015 to determine an allegation that Councillor Mike Taylor had breached the Council's Code of Conduct. The Panel had found that there had been a breach of the Code in respect of obligation 3(2)(f): "You must not conduct yourself in a manner which would reasonably be regarded as bringing your office or the Authority into disrepute" and the full reasons for the decision were contained in the Decision Notice set out at Annex 2 to the report.

Details were given of the sanctions agreed by the Panel, three of which were recommended to the Council for ratification; the fourth relating to publication of the Panel's findings on the website had been implemented.

It was proposed by Councillor Miss J Sergison, seconded by Councillor N Heslop and

**RESOLVED:** That the recommendations of the Hearing Panel be adopted as follows:

- (1) Councillor Taylor be issued with a formal censure;
- (2) Councillor Taylor be removed from Area 2 Planning Committee until the end of April 2017; and
- (3) a press release be issued on the matter.

**C 15/74 CODE OF CONDUCT COMPLAINTS - COMPOSITION OF HEARING PANEL**

The report of the Director of Central Services and Monitoring Officer referred to the adopted arrangements for dealing with Code of Conduct complaints against Borough or Parish Councillors. An amendment was proposed to address the practical operation of the Hearing Panel when considering a complaint against a person acting in a capacity both as a member of the Borough Council and as a Parish Councillor.

**RESOLVED:** That paragraph 1.1 of the Hearing Panel Procedure be amended to provide that where the Subject Member is acting in a capacity both as a Borough Councillor and a Parish/Town Councillor, the Panel shall be comprised of five Borough Members and one Parish/Town Member drawn from the Joint Standards Committee, one of whom shall be elected as Chairman.

**C 15/75 CHANGES TO THE CONSTITUTION**

The report of the Director of Central Services and Monitoring Officer recommended a number of changes to the Constitution. These included replacement of reference to the Town and Parish Councils Standards Sub-Committee with "Standards Hearing Panel" in Council and Committee Procedure Rule 15.21; removal of Protocols A and H of the Code of Conduct, amendment of Protocol C and the re-ordering of the remaining Protocols in Part 5; and amendment of the designation of Authorised Officer for public health functions in Part 3 of the Constitution.

**RESOLVED:** That the Monitoring Officer be authorised to amend the Constitution to give effect to the changes set out in the report.

**C 15/76 SEALING OF DOCUMENTS**

**RESOLVED:** That authority be given for the Common Seal of the Council to be affixed to any instrument to give effect to a decision of the Council incorporated into these Minutes and proceedings.

The meeting ended at 8.16 pm

## Mayor's Announcements

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# Agenda Item 5

Questions from the public pursuant to Council Procedure Rule No 5.6

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# Agenda Item 6

Questions from Members pursuant to Council Procedure Rule No 5.5

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## TONBRIDGE & MALLING BOROUGH COUNCIL

### COUNCIL

16<sup>th</sup> February 2016

#### Joint Report of the Director of Street Scene, Leisure & Technical Services and Director of Central Services & Monitoring Officer

#### Part 1- Public – Matters for Decision

#### 1 PETITION IN RESPECT OF THE PROPOSED INTRODUCTION OF CAR PARKING CHARGES IN WEST MALLING

##### Summary

This report highlights a petition brought forward by West Malling Parish Council in regard to the proposed introduction of car parking charges to the short stay car park in West Malling.

#### 1.1 Background

1.1.1 At the meeting of the Planning & Transportation Advisory Board on 12<sup>th</sup> January 2016 Members considered a review of car parking fees and charges for the Council's car parks across the Borough.

1.1.2 The review included a recommendation to Cabinet that it approve the introduction of a scale of charges for short stay parking in West Malling to operation Monday to Saturday 8am to 6pm as detailed below.

<b>West Malling Short Stay Car Park</b>	
<b>Period</b>	<b>Proposed charge</b>
30 minutes	£0.30
1 hour	£0.60
2 hours	£1.20
3 hours	£1.80

1.1.3 In considering the proposal it was recognised that the current approach to not charge for parking in the West Malling short stay car park resulted in a number of operational problems. Together with the significant cost of the current provision by the Council, it was felt the time was right for a more fundamental review of how charging regimes could help manage the overall parking availability.

- 1.1.4 There have been historic problems with inappropriate long-stay parking taking place in the short stay car park, which is designed to operate on a short stay basis to support local shopping and other town centre visits. Parking used to be restricted to 4 hours, but the car park was popular with those working in the town, and it was common for cars to be parked all day.
- 1.1.5 To address this issue the Council introduced a 3 hour time limit, with a requirement for drivers to take and display a ticket, which contains their vehicle registration number. An additional ticket could then not be obtained, to prevent over-staying.
- 1.1.6 Unfortunately, despite this system there is still abuse of the short-stay parking time limits, as drivers have adopted the practice of entering a registration that is almost correct, then claiming that this was done in error. The Council took a strong enforcement line against this practice with the support of the West Malling Parking Review Steering Group, but this approach has not been supported by the Traffic Penalty Tribunal Service. This has resulted in the Council having the high costs of running a town centre car park with take & display machines, but with no income to enable recovery of the costs and no effective means of applying an appropriate management regime.
- 1.1.7 It was recognised at the November 2015 meeting of the Steering Group that given the operational issues and scale of demand for parking there was pressure to review how the car parks and associated enforcement were operating.
- 1.1.8 It was agreed by the Advisory Board that the most effective and practical way of managing the car park was by the introduction of a parking charge. Setting charges would allow more flexibility in the management of the car park, focussing on encouraging short stay and relatively quick turnover of spaces to optimise availability. Such an approach would also address the costs of running the car park. It was also recognised at the meeting that it was not the intention to introduce a charge for on-street parking in the High Street at this stage, or on Sundays and evenings, but this may need to be reviewed in the future depending on operational experience. Members of the Advisory Board also supported increased resources for enforcement.

## **1.2 Petition**

- 1.2.1 Before the start of the meeting the Chairman of the Advisory Board was presented with a petition by Mr Richard Selkirk on behalf of West Malling Parish Council. The petition contained 2,500 signatures objecting to the introduction of car parking charges in West Malling. Members will be advised of an up to date number of signatures at the meeting.
- 1.2.2 In accordance with the Council's Petition Scheme any petition containing more than 1,500 signatures will be discussed by full Council. The petition organiser is given five minutes to present the petition at the meeting and it is then discussed by Councillors for a maximum of 15 minutes. An additional request to speak has

also been received from a Member of the Chamber of Commerce, Mr Russell Meader, who is also a member of the West Malling Parking Steering Group. In accordance with Council Procedure Rule No 5.17.4 of the constitution Mr Meader will also be allowed 5 minutes to speak on the matter.

1.2.3 As the issue giving rise to the petition is one which the Executive (Cabinet) are required to make the final decision, Council will decide whether to make recommendations to Cabinet to inform that decision. In accordance with the Petition Scheme Council may recommend the following:

- to take the action requested
- not to take the action requested, for reasons put forward in the debate
- to commission further investigation into the matter

1.2.4 The petition organiser will receive written confirmation of the decision reached and this will also be published on the Borough Council's website.

### **1.3 Legal Implications**

1.3.1 The powers allowing the Borough Council to carry out parking management activity are contained in the Road Traffic Regulation Act 1984, supplemented by formal agreement with Kent County Council as the Local Highway Authority, in respect of its powers under the Traffic Management Act 2004. In particular, section 122 of the Road Traffic Regulation 1984 Act imposes a general duty on local authorities exercising functions under the Act to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of safe and adequate parking facilities on and off the highway.

### **1.4 Financial and Value for Money Considerations**

1.4.1 The report to the Planning & Transportation Advisory Board reviewed the fees and charges within a set of guiding principles, the cost of the parking service to the Council and ongoing investment in the Parking Management Service.

### **1.5 Risk Assessment**

1.5.1 There are both operational and financial risks linked to the consideration of parking fees & charges.

### **1.6 Equality Impact Assessment**

1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## **1.7 Policy Considerations**

1.7.1 Asset Management

1.7.2 Community

1.7.3 Customer Contact

## **1.8 Recommendation**

1.8.1 Subject to Member discussion at the meeting it is **RECOMMENDED** that;

Cabinet be requested to consider the proposed introduction of car parking charges in West Malling at its next meeting, taking into account both the petition received from West Malling Parish Council and the outcome of the formal public consultation exercise currently being undertaken.

Background papers:

contact: Robert Styles

Robert Styles

Director of Street Scene, Leisure & Technical Services

Adrian Stanfield

Director of Central Services & Monitoring Officer



Leader's Announcements

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# Agenda Item 9

<u>Meeting</u>	<u>Date</u>	<u>Page Nos. in Minute Book</u>	<u>Recommendations to Council</u>
Licensing and Appeals Panels (x2)	22 October	1 – 4	-
Extraordinary Cabinet	17 November	11 – 12	CB 15/64
Licensing and Appeals Panels (x3)	18 November	15 – 21	-
Licensing and Appeals Committee	2 December	22 – 23	-
Licensing and Appeals Panels (x2)	16 December	28 – 31	-
Audit Committee	25 January	32 – 36	-
Overview and Scrutiny Committee	26 January	37 – 42	-
General Purposes Committee	1 February	43 – 47	GP 16/4
Cabinet	11 February	To follow	To follow
Area 1 Planning Committee	29 October	AP 1 – 5	-
Area 2 Planning Committee	11 November	AP 6 – 12	-
Area 3 Planning Committee	26 November	AP 13 – 15	-
Area 2 Planning Committee	16 December	AP 16 – 19	-
Area 3 Planning Committee	7 January	AP 20 – 22	-
Area 1 Planning Committee	21 January	AP 23 – 26	-
Area 2 Planning Committee	27 January	AP 27 – 31	-

These minutes will include the following proposals from the Cabinet in relation to the Council's budget and policy framework:-

Setting the Budget for 2016/17  
Setting the Council Tax 2016/17  
Savings and Transformation Strategy  
Equality Policy Statement and Objectives 2016-20  
Treasury Management Strategy Statement and Annual Investment  
Strategy 2016/17  
Safeguarding Policy

## Item CB 15/64 referred from Cabinet of 17 November 2015

### CB 15/64 SAVINGS AND TRANSFORMATION STRATEGY

The joint report of the Management Team, the Leader and the Cabinet Member for Finance, Innovation and Property presented for consideration a draft Savings and Transformation Strategy to address the significant financial challenges faced by the Council. It was proposed that the Strategy be adopted by the Council alongside the Medium Term Financial Strategy (MTFS) which had recently been updated by the Cabinet on the basis of a “central case” option leading to a funding gap and overall savings target of £1.4 million (Decision No D150080CAB).

In developing the draft Strategy, it was recognised that there was no one simple solution to addressing the challenges. A number of objectives were set out in the Annex to the report and eight key themes identified with outline targets for each, creating a measured structure and framework for delivering the necessary savings within a timeframe. It was expected that during the coming months options for savings within each theme would be brought forward for initial consideration by Advisory Boards and the Overview and Scrutiny Committee.

Members acknowledged that whilst the Strategy included some major areas where savings could be made without direct effect on services, it might be necessary to decide that other service areas should change to accommodate saving requirements. This could mean doing things differently, more efficiently and with increased income opportunities where possible or running services with fewer resources. Difficult choices and, consequently, decisions were anticipated. A set of priorities would therefore be established focussing on customer and community service activity with the aim of maintaining the Council’s reputation of good front line service provision.

The Chief Executive emphasised that full engagement with staff would be essential in taking forward the challenges and she gave an update on a series of briefings which had taken place.

**RECOMMENDED:** That the Savings and Transformation Strategy set out in Annex 1 to the report be adopted by the Council to sit alongside the Medium Term Financial Strategy.

**\*Referred to Council**

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# TONBRIDGE & MALLING BOROUGH COUNCIL

## CABINET

17 November 2015

### Joint Report of the Management Team, Leader of the Council and Cabinet Member for Finance, Innovation and Property

#### Part 1- Public

#### Matters for Recommendation to Council

### 1 SAVINGS AND TRANSFORMATION STRATEGY

**The report sets out for Members' approval a draft Savings & Transformation Strategy to address the significant financial challenges faced by the Council.**

#### 1.1 Introduction

- 1.1.1 At the last meeting of the Cabinet on 7 October, the Director of Finance & Transformation reported on how the Medium Term Financial Strategy (MTFS) was being updated.
- 1.1.2 Reference was made to the significant financial challenges facing the Council, including uncertainty over grant funding, especially New Homes Bonus, and the difficulty of financial planning. Cabinet agreed that it was appropriate to reflect the "central case" option in updating the MTFS, leading to a funding gap – and hence an overall savings target – of £1.4 million based on current forecasts. This is of course in addition to the £2.8 million that has been delivered over the last four to five years.
- 1.1.3 It was noted that the target needed to be achieved within the next three financial years, and can be broken down into the following three 'tranches':
- Tranche 1 - £200,000 being delivered by the beginning of 2016/17
  - Tranche 2 - £700,000 being delivered by the beginning of 2017/18
  - Tranche 3 - £500,000 being delivered by the beginning of 2018/19
- 1.1.4 At the meeting, Members recognised the significant financial pressure being faced and, in response to questions, the Chief Executive outlined the draft strategy Management Team had recently begun to prepare.
- 1.1.5 This report presents the proposed strategy for Cabinet's approval and recommendation onto Full Council for adoption alongside the MTFS.

## 1.2 Development of a Strategy

1.2.1 It is important to recognise that there is no one simple solution to address the challenges the Council faces. We will, therefore, need to adopt a number of ways to deliver the savings; set a timetable and then adhere to the agreed programme. Undoubtedly, this will be difficult alongside the operational pressures we are also facing. That said, this is the case for the majority of public service bodies in the current economic climate and therefore we are not in a 'unique' position.

1.2.2 The Management Team have set out our objectives in setting a Strategy and then identified a number of key 'themes' against which deliverable targets should, and can, be set. Members, in liaison with Management Team, will need to make decisions and take action to deliver these savings.

1.2.3 The attached table **[Annex 1]** sets out a summary of the key themes with outline targets for each. The targets are 'broad' and overachievement in one area may mean that other targets can be scaled back. Conversely, underachievement in one area will mean that other targets will need to increase.

1.2.4 In summary, the themes and outline targets are:

1)	Generate New Income	£100k
2)	In-Service Efficiencies	£200k
3)	Service Change and Reduction	£350k
4)	Fees & Charges	£100k
5)	Contracts	£350k
6)	Organisation Structure Change	£200k
7)	Partnership Funding	£200k
8)	Asset Management	£50k

1.2.5 At this stage, we cannot provide a definitive list of the options for savings within each 'theme', but over the coming months we expect to start bringing ideas forward for Members' consideration. It is expected that some options may be presented to Advisory Boards, as well as some being considered by the Overview & Scrutiny Committee (as they are now). In all cases, recommendations will be made to the Cabinet.

1.2.6 Members may note that the overall 'value' of the targets set out in Annex 1 is greater than the currently identified funding gap of £1.4 million. This is deliberate and reflects the fact that the targets by theme are very broad; and we also need to be aware that the funding gap could change depending on the outcome of the Spending Review.



### **1.3 Key Issues and Priorities**

- 1.3.1 We suggest that underpinning the approach outlined above should be a set of priorities. To take an honest and transparent position, it would be misleading to say that the Council will be able maintain high standards of service across all that it does.
- 1.3.2 Whilst the draft strategy at Annex 1 includes some major areas where savings can be made without direct effect on services, it has to be recognised that we may need to decide that some service areas should change to accommodate saving requirements. That might mean doing things differently, more efficiently and with increased income opportunities where there is the opportunity to do so. On the other hand it might also mean that services will simply need to be run with less resources and we will have some difficult recommendations, and ultimately decisions, to make.
- 1.3.3 We are of the view that our priorities should focus on our customer and community service activity, doing all we can to maintain the Council's reputation of good front line service provision. In some areas there will need to be decisions as to the level of service we provide and in other cases whether we should stop doing some of the things we have traditionally done.
- 1.3.4 Ultimately, this is likely to result in us engaging with the public and partners about those choices through consultation exercises, and of course assessing and addressing any equality impacts that may arise.

### **1.4 Engaging our Staff**

- 1.4.1 Full engagement with staff will be essential in taking forward these challenges. In many ways, the most significant challenge is a cultural one; i.e. the need to think and act differently. We are seeing some huge changes in terms of finance and policy on many important matters at national level that will impact upon us locally. We need to adjust the way we work in order to react to these changes; this will apply equally to both staff and Members.
- 1.4.2 Management Team have arranged staff briefings channels to ensure that good communication and awareness are in place, and to highlight the importance and approach to the work we have in front of us.

### **1.5 Next Steps**

- 1.5.1 Members are asked to embrace this 'measured' approach, which we anticipate will need to be 'flexible' given the uncertainties regarding the Spending Review.
- 1.5.2 The Corporate Plan setting out the Council's overall Vision and Priorities will be presented to the Overview & Scrutiny Committee and the Cabinet early in the New Year. This document will provide Members with the overarching context for the consideration of savings options.

- 1.5.3 With particular reference to 'In-Service Efficiencies', Service managers will be asked to look very closely at their services and identify what can be done to achieve efficiencies. This will be against some savings targets to reflect a realistic and sustainable future budget and also taking into account the nature, scale and flexibility of the service.
- 1.5.4 Management Team will also consider opportunities for realigning services and management where that could bring benefits to working on priority service delivery to our customers and communities, as well as realising some efficiencies and savings.
- 1.5.5 The Overview and Scrutiny Committee have already agreed a programme of reviews which will assist in delivering options under several of the themes identified in paragraph 1.2.3.
- 1.5.6 With regard to the Fees and Charges theme, Members of the various Advisory Boards will see reports coming forward within the next couple of months.

## **1.6 Legal Implications**

- 1.6.1 Any review of service provision should consider whether the services in question are mandatory i.e. services which the Council has a duty to deliver, or are additional/ discretionary services which the Council is empowered to provide and may be linked to payment by the service user for the additional costs of the discretionary service.
- 1.6.2 Although some services are mandatory, the Council may still have discretion over the level and type of service offered.

## **1.7 Financial and Value for Money Considerations**

- 1.7.1 As set out above.

## **1.8 Risk Assessment**

- 1.8.1 The Local Government Act 2003 requires the Chief Financial Officer, when calculating the Council Tax Requirement, to report on the robustness of the estimates included in the budget and the adequacy of the reserves for which the budget provides. Consideration will and is given to the risks associated with any budget setting process where various financial and other assumptions have to be made. The Medium Term Financial Strategy sets out the high level financial objectives the Council wishes to fulfil and underpins the budget setting process for the forthcoming year and over the Strategy period. As the Council's high level financial planning tool the Strategy needs to be reviewed and updated at least annually and in the current climate regularly reviewed by Management Team.
- 1.8.2 The increased uncertainty and volatility particularly in some of our major sources of income (business rates and New Homes Bonus) make financial planning difficult with the increased risk of significant variances compared to projections.

The forecast 'funding gap' of £1.4 million set out above needs to be addressed within the next three years in order to make the MTFS sustainable.

- 1.8.3 The draft Savings and Transformation Strategy gives a structure and framework as to how the Council can meet its financial challenges. This framework has been discussed in outline with the External Auditors who are content with the proposed approach.

## 1.9 Equality Impact Assessment

- 1.9.1 The decisions recommended through this paper at this stage have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users at this stage, although as savings options emerge, equality impact assessments will need to be carried out.

## 1.10 Policy Considerations

- 1.10.1 Communications ; Community; Human Resources; Customer Contact; Business Continuity/Resilience

## 1.11 Recommendations

- 1.11.1 Cabinet is requested to **RECOMMEND** to Full Council the **ADOPTION** of the Savings and Transformation Strategy to sit alongside the Medium Term Financial Strategy.

Background papers:

contact: Sharon Shelton

Nil

Julie Beilby

Julie Beilby  
For Management Team

Nicolas Heslop  
Leader

Martin Coffin  
Cabinet Member for Finance,  
Innovation & Property

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# Savings & Transformation Strategy 2016/17 – 2019/20

## INTRODUCTION

TMBC has to deliver some significant savings in our financial planning. Over the 10 year life of our Medium Term Financial Strategy (MTFS), we are very likely to have to deliver savings of at least £1.4 million in our base budget.

It could be more severe than that depending on what happens nationally. This is a major task when our net revenue expenditure is approximately £13 million and we have already delivered £2.8 million in savings over the last 4 to 5 years.

We are fortunate that we do not have to make all the savings required in our first year and can spread the challenge in 'tranches' over a few years, as set out within the MTFS. Nevertheless, we need to plan to make these savings and achieve as much as possible in the earlier years to provide the best long-term financial sustainability.

## OBJECTIVES

In developing this strategy, the Council has set the following objectives:

1. To deliver sufficient savings in order to bridge the funding gap identified in the Council's MTFS, and to deliver those savings as quickly as possible in order to minimise risk to the Council's finances;
2. To direct resources to priority areas in line with the principles of the Council's Corporate Plan;
3. To maintain the Council's reputation of good front line service provision;
4. To adopt a 'mixed' approach to addressing the funding gap through a series of 'themes';
5. To be open to accept 'cultural' change in the ways we work and offer services to the public in order to release efficiencies and savings; and
6. To engage, as appropriate, with stakeholders when determining how savings will be achieved.

## THE STRATEGY

It is recognised that there is no one simple solution to addressing the financial challenges faced. The Council will need to adopt a number of ways to deliver the savings within an agreed timetable.

This Strategy sets out a measured structure and framework for delivering the necessary savings through a series of 'themes'. Each theme has a deliverable target within a timeframe.

Whilst the framework includes some major areas where savings can be made without direct effect on services, by adopting this Strategy the Council has recognised that it may need to decide that some service areas should change to accommodate saving requirements. That might mean doing things differently, more efficiently and with increased income opportunities where there is the opportunity to do so. It might also mean that services will simply need to be run with fewer resources. The Council is committed to engagement with relevant stakeholders as proposals are brought forward.

The Themes, Targets, and Timeframes for the Strategy are set out in the table below, and will be the subject of review at least annually.

Progress on identifying and implementing savings across the various themes will be regularly reported to and reviewed by Management Team and in-year update reports presented to Members as appropriate.

Julie Beilby

Chief Executive

Sharon Shelton

Director of Finance & Transformation

Nicolas Heslop

Leader of the Council

Martin Coffin

Cabinet Member for Finance, Innovation  
& Property

November 2015

## Savings & Transformation Strategy 2016/17 – 2019/20

THEME	INDICATIVE YEAR(S)	TARGET £000	NOTES
New Income	2016/17/18	100	Opportunities for new income streams across the Council's Services
In-Services Efficiencies	2016/17	200	Targets to be set to reflect sustainable future budgets within Services
Service Change & Reduction	2016/17/18	350	Review of levels of service provision, considering discretionary spend and reductions in standards of mandatory services
Review of Fees and Charges	2016/17	100	Review of existing charges to maximise income and recovering costs
Contracts	2018/19/20	350	Opportunities for efficiencies in specifying and re-tendering major contracts
Organisation Structure Change	2017/18	200	Opportunities for management and service delivery improvements/efficiencies through realignment of services under combined management and review of senior management structures
Partnership Funding	2017/18	200	Review of funding arrangements with other agencies and sectors
Asset Management	2017/18	50	Investment opportunities from release of assets
<b>TOTAL</b>	<b>2016-2020</b>	<b>1,550</b>	

Note: This Strategy will be updated on a least an annual basis to reflect challenges set out in the Medium Term Financial Strategy

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**Item GP 16/4 referred from General Purposes Committee of 1 February 2016**

## **GP 16/4 LOCALISM ACT - PAY POLICY**

The report of the Director of Central Services advised that the Localism Act 2011 required local authorities to review their pay policy statements for each financial year. The report summarised the requirements of the Act and presented an updated Pay Policy Statement for 2016/17. It was noted that there had been no changes in the Council's remuneration policy and the substantive content of the updated statement was identical to that adopted by the Council in February 2012.

**RECOMMENDED:** That the Pay Policy Statement 2016/17 set out in Annex 1 to the report be commended for adoption by the Council.

**\* Referred to Council**

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**TONBRIDGE & MALLING BOROUGH COUNCIL**

**GENERAL PURPOSES COMMITTEE**

**01 February 2016**

**Report of the Director of Central Services**

**Part 1- Public**

**Matters for Recommendation to Council**

**1 LOCALISM ACT – PAY POLICY**

**Section 38(1) of the Localism Act 2011 requires English and Welsh local authorities to review their pay policy statement for each financial year. This report summarises the requirements of the Act and presents an updated Pay Policy Statement for 2016/17 in Annex 1. Members will note that as there have not been any changes in the Council’s remuneration policy, the substantive content of the updated Pay Policy Statement in Annex 1 is identical to the Council’s first Pay Policy Statement (adopted by the Council on 16 February 2012).**

**1.1 Contents of the Pay Policy**

- 1.1.1 As members may recall, the Act is prescriptive in that it requires the pay policy statement to include: the level and elements of remuneration for each chief officer; a definition of the “lowest paid employees” and their remuneration; the policy on the relationship between the remuneration of its chief officers and other officers; the policy on pay on recruitment, increases in pay, use of performance related pay and bonuses; and, termination payments and transparency.
- 1.1.2 The title “chief officer” includes both statutory and non-statutory chief officers and their deputies. Therefore, within the Pay Policy Statement set out in Annex 1, the information about the remuneration of chief officers includes the posts of the Chief Executive, the Council’s four Service Directors, the Head of Planning, the Chief Financial Services Officer and the Chief Environmental Health Officer, as well as the senior officers that are directly accountable to these “chief officers”.
- 1.1.3 The Act’s definition of remuneration includes pay, charges, fees, allowances, benefits in kind, enhancement of pension entitlements and termination payments. All of these elements have been covered in the pay policy statement attached in Annex 1.

- 1.1.4 In order to provide a holistic and transparent context for the remuneration of chief officers and their deputies, the pay policy in Annex 1 provides an overview of the pay elements for all Council employees.

## **1.2 Legal Implications**

- 1.2.1 The policy set out in Annex 1 contains all of the elements of a statutory pay policy as stipulated in section 38 (1) of the Localism Act 2011.
- 1.2.2 The attached pay policy is also compliant with Regulation 7 of the Local Government (Early Termination of Employment)(Discretionary Compensation) (England & Wales) Regulations 2006 and the Local Government Pension Scheme (Administration) Regulations 2008 & 2014.
- 1.2.3 The definition of the terms “chief officer” and “deputy chief officer” is in accordance with section 2 of the Local Government and Housing Act 1989.

## **1.3 Financial and Value for Money Considerations**

- 1.3.1 As set out in Section A of the attached Pay Policy, the Council’s approach to setting a pay multiple is broadly calculated on a base salary multiple of 8 being the gap between the remuneration of the lowest and the most highly paid employees and is enshrined within the Council’s locally determined job benchmarking evaluation scheme. Such an approach places an emphasis on cash reward as the corner stone of the Council’s pay policy, and ensures that pay is based on job requirements.

## **1.4 Risk Assessment**

- 1.4.1 Given current media scrutiny of public sector remuneration it would be imprudent for the Council not to comply with the Localism Act’s requirement to have reviewed the Pay Policy Statement by 31 March 2016.

## **1.5 Equality Impact Assessment**

- 1.5.1 The recommendation to adopt the Pay Policy Statement in Annex 1 has a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.
- 1.5.2 As members have already been advised in the Annual Report on progress in achieving the Council’s Equality Aims and Actions, the outcomes of the recent pay analysis based on gender has identified a full time pay gap of 18.9% in favour of men. The key contributing reason for this pay gap is that there are more women than men applying for and consequently working in jobs graded at the lower end of the pay scale. There is no evidence of men and women being paid differently for equal work.

## **1.6 Policy Considerations**

1.6.1 HR Policy

**1.7 Recommendations**

1.7.1 It is recommended that this committee commends the pay policy in Annex 1 to this report for adoption at the Council meeting on 16 February 2016.

Background papers:

contact: Delia Gordon

Nil

Adrian Stanfield  
Director of Central Services

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## Annex 1

### Pay Policy Statement 2016/17

#### Introduction

When determining remuneration levels the Council is mindful of the requirement to balance the needs of managing scarce public resources with the need to secure and retain high-quality employees. The Council aligns its reward strategy with organisational needs by an emphasis on cash rewards, and ensuring that pay is determined by job requirements. The Council aims to operate a consistent and equitable organisation-wide reward system by placing the responsibility for remuneration decisions with a committee of elected councillors, the General Purposes Committee, and the responsibility for administering the pay policy within the Council's Personnel team.

Section 38 (1) of the Localism Act 2011 requires the council to prepare an annual pay policy statement for 2015/16. The Act specifies that the following must be included in the pay policy statement:

- the level and elements of remuneration for each chief officer
- the policy on the remuneration of chief officers on recruitment
- increases and additions to their remuneration including performance related pay, bonuses, charges, fees, allowances, benefits in kind and termination payments
- a definition of the "lowest paid employees" and the policy on the remuneration of this group
- the policy on the relationship between the remuneration of its chief officers and other officers
- policy on re-employing someone who has been made redundant.

This statement will be published on the Council's website.

#### Section 1 – Remuneration of statutory and non-statutory Chief Officers and Deputy Chief Officers

The term "chief officer" within The Localism Act includes both statutory and non-statutory chief officers, and their deputies. The actual remuneration for these roles is available on the Council's website

(<http://www.tmbc.gov.uk/services/council-and-democracy/councillors,-democracy-and-elections/transparency-senior-salaries>)

The salary scales for the statutory and non-statutory Chief Officers and Deputy Chief Officers in post in January 2016 is set out below.

No of chief officers	Grade	% of M2 benchmark	Pay Point Range
13	M6	56.0%	141- 144

7	M5	61.0%	147 - 150
3	M4	70.0%	151- 154
4	M2a	97.5%	181- 184
1	M1	125.0%	191- 194

### **Fee for acting as the Returning Officer**

Tonbridge & Malling Borough Council is required to appoint a Returning Officer by virtue of section 35 of the Representation of the People Act 1983. In Tonbridge & Malling, the Chief Executive has been appointed as the Returning Officer. This is a personal appointment, separate from their other duties. In this capacity they are the Returning Officer for UK Parliamentary elections and elections to the Borough Council and to Parish Councils within this Borough. The Returning Officer fee is payable for the substantial additional duties undertaken, and leadership required of the Returning Officer in planning, delivering and undertaking the elections, and recognises the personal nature and personal responsibility of the role of the Returning Officer.

For Borough and Parish Council elections, the Returning Officer fee is calculated in accordance with an agreed Kent Scale of Fees. For National, European and Police & Crime Commissioner elections the fee rate is set by central government. A Police & Crime Commissioner election is scheduled for May 2016.

### **Section 2 – Remuneration of the lowest paid employees**

In compliance with Section 38 of the Localism Act, for the purposes of this statement the “lowest paid employee” has been defined as those who are engaged as cleaners. In 2016/17 it is anticipated that such posts will receive a full time annual salary equivalent of approximately £15,294.

### **Section 3 – Decision on pay**

The pay of all council employees (including chief officers) is determined by the evaluated grade of the post. The pay band for most jobs within the council (including chief officers) is very narrow, based on 3 or 4 incremental points. Progression through the pay band is based on length of service, subject to the achievement of expected performance standards, and thus recognises development in a role over time based on the accumulation of experience and knowledge. It is anticipated that during 2016/17 the total number of permanent and fixed term contract staff on the Council’s payroll will be approximately 270 in any one month.



The Council has not adopted the national local government job evaluation or grading schemes but has developed a locally negotiated framework that more closely reflects its own particular requirements. Within this framework there are two remuneration “families”. The first has been developed for the Council’s professional and senior managerial cohorts, and includes chief officers. The second is for supervisory, technical and clerical staff.

All staff (including chief officers) are appointed to the organisation at the bottom of the grade, unless there are exceptional circumstances based on business need.

### **Annual Pay Award**

The salary of all council employees (including chief officers) may increase annually by an annual pay award which is locally determined taking into consideration:

- “caps” on public sector pay rates set by the Government
- the council’s ability to pay
- inflation levels
- the “going rate” of pay awards in neighbouring authorities and nationally
- recruitment and retention levels.

## **Section 4 – Pay structure and pay relationships.**

The Code of Recommended Practice for Local Authorities on Data Transparency September 2011 requires that there is a process established to monitor the rate of growth of senior earnings compared to all other employees in the organisation. During 2016/17 there will be a multiple of approximately 8 between the base level salary of the Chief Executive and a cleaner, reflecting the differences in skill sets, complexity and span of control from the lowest to the highest paid employees of the Council.

The total salary for the post of Chief Executive is in the region of £111,774. The median full time equivalent salary for all other employees in Tonbridge & Malling Borough Council is in the region of £25,250, the mean full time equivalent salary is in the region of £29,795. The pay multiple is therefore approximately 4.42 against the median and 3.75 against the mean.

The Council’s bespoke grading structure for employees with professional and specialised high level skill sets is entitled the “M” grade framework. All those referred to as chief officers within this pay policy statement fall within the “M grade” framework.

A feature of the M grade framework is that the remuneration levels for all M grade posts (including those of chief officers), are fixed as a percentage of a notional benchmark grade M2. Therefore, the grading structure specifies the pay multiples attached to each grade as a percentage of the lowest incremental point of a notional benchmark M2. Posts are positioned within the

M grade framework on the basis of the required specialist knowledge, professional skills, depth of professional and managerial judgement, and managerial span of control. Broadly speaking the range of capabilities required for junior M grade posts (M9 – M7 inclusive) equate to professional and/or managerial capability equivalent to Level 6 of the National Qualifications Framework (NQF). Those occupying senior managerial posts graded M6 to M2 are required to possess **both** professional and managerial skill sets equivalent to Level 7 of the NQF. All four director level chief officer posts are graded as M2a. The professional and managerial capabilities **and** span of control required at director level broadly equate to level 8 of the NQF. A Level 8 degree of professional and managerial expertise is also required for the post of the Chief Executive. This, alongside the extensive span of control intrinsic to the role of paid head of service for the entire Council workforce, merits the grade of M1.

### **Supervisory, technical and clerical grades**

The council has developed a bespoke grading structure for its supervisory, technical and clerical staff that ranges from the grade of senior officer to clerical scale 1. Broadly speaking the managerial, professional and skill set required for posts graded Senior Officer equate to Level 5 of the NQF, posts graded scale 5-6 equate to Level 4 of the NQF, posts graded scale 3-4 to Level 3 of the NQF, posts graded scale 1-2 require a Level 2 skill set.

The Council considers that the relationship between the base salaries of its highest and lowest paid employees, as well as the relationship between the highest paid and the mean and medial salaries of the entire workforce, represents an appropriate, fair and equitable internal pay relationship.

## **Section 5 – Policies common to all employees**

The following elements of remuneration are determined by corporate policies or arrangements which apply to all permanent employees of the Council (including its chief officers and deputy chief officers), regardless of their pay level, status or grading. Full details on any of the policies listed below can be provided on request.

The Council aims to have a streamlined and transparent pay structure and therefore it does not pay additional one off bonuses, market premiums, location allowances, subsidy towards child care costs or special awards for any staff (including chief officers). Pension contributions for all employees opting to join the Local Government Pension Scheme are nationally determined.

### **Payments on termination of employment**

According to the Local Government (Early Termination of Employment)(Discretionary Compensation )(England and Wales) Regulations 2006 the Council has the power to make discretionary payments on early termination of employment. The Council has determined that it will calculate payments made to any eligible employee (including chief officers) who are made redundant or who depart on the grounds of the efficiency of the service by using the Government's statutory redundancy payment calculator formula and the employee's actual weekly pay. For those who depart on the grounds of redundancy or efficiency of the service, or who chose to retire "early", the Council does not increase the employee's total pension scheme membership or award additional pension. This response to the Local Government Pension Scheme (Administration) Regulations 2008 applies to all employees, including chief and deputy chief officers.

The Council's policy is that it does not re-employ anyone (including chief or deputy chief officers) who has left with a severance or redundancy payment, nor does it re-engage them on a self-employed basis with a contract for services.

### **Car allowances**

For those posts where it is deemed that there is an essential requirement for the post holder to use a car to perform their job, and they are expected to travel in excess of 2,500 miles per annum in the course of their duties, the post holder either receives a lump sum allowance to contribute towards the associated running costs of the car in accordance with the rates previously set by the National Joint Council or they are allocated a lease car, or they receive a cash equivalent payment as an alternative to a lease car. Those who drive leased cars are required to make their leased car available for the use of all Council employees possessing a suitable driving licence, if so required, (the Council has the appropriate insurance cover).

### **Telephone allowances**

Those employees who are deemed to be essential users of mobile telephones are either supplied with a mobile telephone for council related activities, or receive a mobile telephone allowance

### **Professional fees**

Annual professional subscription fees to one relevant professional body are reimbursed to those employees where it is deemed an essential requirement for the post holder to belong to a professional institute.

### **Reimbursement of removal/relocation costs on appointment and mortgage subsidy scheme**

The Council's relocation and mortgage subsidy schemes provide financial assistance (within pre-defined limits) to employees who re-locate from outside

a reasonable travel area to the Borough to take up an appointment with the Council.

### **Subsistence Allowance**

The Council reimburses expenditure on meals, accommodation, and any other expenses necessarily (within pre-defined limits) incurred by employees who have to be away from home on Council business.

### **Standby and call out allowances**

Any employee who is required to undertake standby and call-out duties will be paid at the appropriate rate in accordance with the negotiated policy and payment rate for their role.

## TONBRIDGE & MALLING BOROUGH COUNCIL

### COUNCIL

16 February 2016

#### Report of the Director of Central Services and Monitoring Officer

#### Part 1- Public

#### Matters For decision

#### **1 RECOMMENDATION TO COUNCIL FOLLOWING HEARING OF JOINT STANDARDS COMMITTEE ON 4 JANUARY 2016 – CLLR MIKE TAYLOR**

##### **1.1 Introduction**

1.1.1 On 4 January 2016 the Hearing Panel of the Joint Standards Committee met to determine an allegation that Councillor Mike Taylor had breached the Codes of Conduct of Borough Green Parish Council and Tonbridge & Malling Borough Council.

1.1.2 The complaint against Cllr Taylor arose from a letter dated 5 December 2014 that he wrote to the Planning Inspectorate in relation to an appeal against the refusal of a planning application for the construction of a residential extension at 13 Harrison Road, Borough Green.

1.2 In that letter, Cllr Taylor alleged that "...the size of extensions approved under TMBC Officer's delegated powers has steadily increased to what we believe to be excessive proportions." It was also alleged that objections to planning applications were "always ignored" by Officers, and that "because the sole objector [to the application in question] was previously a long serving Parish Councillor, and ex Chair and Vice Chair, a long serving ex member of T&MBC, and past Leader and Mayor, any reasonable person could draw the conclusion that undue influence had been brought to bear on the planning process, which could lead to the Planning Process itself being brought into disrepute." A copy of the letter is attached as **Annex 1**.

1.3 The Complainant, Mr Barry Hughes (who was the objector in question and referred to in Cllr Taylor's letter, although not by name) completed a complaint form, in which he alleged the offending behaviour to be "*an attempt to bring me, the Borough Council and the whole planning process into disrepute by innuendo and inference without any shred of evidence.*"

1.3.1 An independent external investigator (Richard Lingard) was appointed to carry out the investigation into the allegation, and his report is set out at **Annex 2**. The report concluded that Cllr Taylor had breached –

- (i) The obligation set out at paragraph 1 of the Borough Green Parish Council Code of Conduct, which requires members to

*'behave in such a way that a reasonable person would regard as respectful.'*

and

- (ii) The obligation set out at paragraph 3(2)(f) of the Tonbridge and Malling Borough Council Code of Conduct, namely

*'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the authority into disrepute.'*

- 1.3.2 The conclusions of the Independent Investigator were upheld by the Hearing Panel on 4 January 2016. The full reasons for the decision are contained in the Decision Notice which is annexed to this report as **Annex 3**.

#### 1.4 **Sanctions**

- 1.4.1 Once the Panel have found that there has been a breach of the Code of Conduct the adopted arrangements for dealing with complaints require the Panel to hear representations from the Monitoring Officer ("MO") and the Independent Person ("IP") on whether there should be any sanctions and from the MO, IP and the Subject Member on what sanctions should be imposed. The representations made to the Panel have been recorded in paragraphs 2 and 4.1 to 4.3 of the Decision Notice.
- 1.4.2 Paragraph 4 of the Council's adopted arrangements for dealing with Hearings sets out the range of possible sanctions which the Panel can impose. The arrangements are attached at **Annex 4**. The Panel are not entitled to apply or recommend any other sanctions.
- 1.4.3 At the Hearing the Panel imposed the following sanctions:
- (a) In relation to the Borough Green Parish Council Code, the Panel's findings would be reported to the Parish Council. In addition, the Panel's findings would be published as follows
- publication on the TMBC website;
  - by email to all Borough Councillors and Borough Green Parish Councillors;
  - by email to the local press; and
  - by email to all Parish Clerks
- (b) In relation to the TMBC Code, the Panel recommended that the Borough Council issue a formal censure. In addition, the Panel resolved to send a formal letter to Councillor Taylor, the terms of which were to be finalised by the Panel in due course. The Panel's findings would also to be published in the same manner as set out above.

1.4.4 The proposed formal censure is a recommendation to Council as a result of the adopted arrangements which require certain decisions on sanctions to be ratified by Council. The other elements of the decision do not require approval by Council and have been implemented.

## 1.5 **Legal Implications**

1.5.1 The Panel have determined that there were breaches of the Borough Green Parish Council Code, and the Tonbridge & Malling Borough Council Code of Conduct by Councillor Taylor. There is no right of appeal against that decision.

1.5.2 Council are asked to consider only the proposed sanction relating to a formal censure. In doing so, Members should have regard to the reasoning of the Panel and determine whether the proposed sanction is fair and proportionate and in line with the adopted arrangements.

1.5.3 As Council will be confirming whether a formal censure should be issued to Councillor Taylor, it must also consider whether Councillor Taylor's right to freedom of expression, enshrined in Article 10 of the European Convention on Human Rights, will be interfered with. The representations of the Deputy Monitoring Officer to the Hearing Panel (which are attached to the decision notice) on this point are sound legal advice for Council to consider and the reasoning of the Panel on this point is at paragraph 4.5 of the Decision Notice.

## 1.6 **Financial and Value for Money Considerations**

1.6.1 The investigation in to this matter was carried out by an external investigator, whose services cost £2056.25.

## 1.7 **Recommendation**

1.7.1 Council are requested to consider the recommendation of the Hearing Panel at paragraph 1.4.3.(b) above, and determine whether a formal censure should be issued to Cllr Taylor.

Background papers:

contact: Adrian Stanfield

Nil

Adrian Stanfield

Director of Central Services and Monitoring Officer

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## TONBRIDGE & MALLING

Cllr Mike Taylor  
Borough Councillor for Borough Green & Longmill

mike.taylor@tmbc.gov.uk  
mike.truck@btconnect.com

Planning Inspectorate  
Bristol

PINS REF APP/H2265/D/14/2228530  
Plan App Ref TM/02798/FL  
13, Harrison Rd, Borough Green Kent TN15 8RU

## BOROUGH COUNCIL

41 Maidstone Road  
Borough Green  
Sevenoaks  
Kent TN15 8BQ  
Tel: 01732 882880

5 December 2014

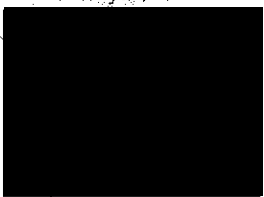
Dear Sir,

I am writing this personal letter because of concerns voiced to me. For the past few years, despite objections by the Parish Council, the size of extensions approved under TMBC Officer's delegated powers has steadily increased to what we believe to be excessive proportions. However, we no longer waste our time tabling objections which we know Officers will always ignore.

Completely out of the blue, TMBC Planning Officers rejected this second application, even after apparently advising the applicant.

Because the sole objector was previously a long serving Parish Councillor, and ex Chair and Vice Chair, a long serving ex member of T&MBC, and past Leader and Mayor, any reasonable person could draw the conclusion that undue influence had been brought to bear on the Planning Process, which could lead to the Planning Process itself being brought into disrepute.

Yours Sincerely  
Mike Taylor



Ward Member, Borough Green & Longmill  
Chair, Borough Green Parish Council

cc BGPC  
TMBC Planning  
11, Harrison Rd  
13, Harrison Rd  
Chair & Members, Area 2 Planning Committee

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Report of an Investigation into a Complaint  
brought by Mr. Barry Hughes against Cllr Mike  
Taylor of Tonbridge & Malling Borough Council  
and Borough Green Parish Council

Private & Confidential

Final Version

13 October 2015

**Richard Lingard LLB**  
**Solicitor**

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## **Richard Lingard – Curriculum Vitae**

Educated at Magdalen College School Oxford and Southampton University, I qualified as a solicitor in 1980. I trained in private practice and spent four years in the commercial sector before going into local government.

Until my retirement in September 2011, I was the Head of Legal & Democratic Services and Monitoring Officer at Guildford Borough Council for whom I worked for some 30 years.

Since 2011 I have undertaken and reported on some 20 investigations covering allegations of misconduct against City, County, Borough, Town and Parish Councillors and Council Officers and carried out a number of procedural and governance reviews for local authorities.

## **EXECUTIVE SUMMARY**

This is the final version report of my investigation into a complaint against Cllr Michael Taylor of Tonbridge & Malling Borough Council (TMBC) and Borough Green Parish Council (BGPC). The investigation was commissioned by Lynn Francis, Deputy Monitoring Officer of TMBC, and has been conducted under the local arrangements adopted by TMBC pursuant to the provisions of the Localism Act 2011.

The complaint against Cllr Taylor arises from a letter dated 5 December 2014 that he wrote to the Planning Inspectorate (PINS) in relation to an appeal against the refusal of a planning application for the construction of an extension at 13 Harrison Road, Borough Green.

The complaint was lodged by Mr. Barry Hughes of 11 Harrison Road, Borough Green who describes Cllr Taylor's letter as *'An attempt to bring me, the Borough Council and the whole planning process into disrepute by innuendo and inference without any shred of evidence'*

I have concluded that there have been breaches of the TMBC and BGPC Codes of Conduct.

### **1. THE COMPLAINT**

- 1.1 The complaint form submitted by Mr. Hughes and reproduced as Appendix 1, includes the italicised words from the third paragraph of the Executive Summary above and a copy of Cllr Taylor's letter of 5 December 2014 to the Planning Inspectorate.
- 1.2 Mr. Hughes' complaint does not cite or refer to any particular paragraphs of either the TMBC or BGPC Codes of Conduct.

### **2. PROVISIONS CONSIDERED**

- 2.1 In common with all local authorities, TMBC and BGPC each have a Code of Conduct for Members. Upon taking office, every Councillor undertakes to abide by the Code in force for the time being.
- 2.2 TMBC adopted a new Code of Conduct on 1 July 2012 and it is set out in full in Part 5 of the Council's Constitution, whilst BGPC adopted its Code on 4 March 2013.
- 2.3 The two Codes of Conduct differ in some respects but both are based on the seven Nolan Principles of Public Life, which are set out in full at Annex 1 to Part 5 of the TMBC Constitution. In broad terms those principles require Members to have regard to the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership when acting as a Member or co-opted Member of a local authority. The Nolan Principles do not themselves form part of the Codes of Conduct so it is necessary to examine which paragraphs of the two codes may be relevant in this instance.
- 2.4 I consider that the relevant provision of the TMBC Code is the general obligation set out in Paragraph 3 (2) (f), which reads as follows:

*'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the authority into disrepute'.*

2.5 I consider that the relevant provision of the BGPC Code is the obligation set out as Paragraph 1 of 'Member Obligations', which requires members to:

*'behave in such a way that a reasonable person would regard as respectful.'*

2.6 I do not consider that any other provision of either code is relevant to the matter under investigation and have accordingly assessed Mr. Hughes' complaint and Cllr Taylor's conduct against the two cited paragraphs.

### **3. PROCESS TO DATE**

3.1 Upon receipt of the complaint, Ms Francis' fellow Deputy Monitoring Officer Mr. Kevin Toogood and the Monitoring Officer Mr. Adrian Stanfield consulted with TMBC's Independent Person, Mr. David Ashton and with the Chairman and Vice-Chairman of TMBC's Standards Committee and it was agreed that an independent investigator should be appointed to conduct an investigation into the matter.

3.2 Following a preliminary exchange of emails, Ms Francis appointed me in an email of 20 August to conduct an investigation and subsequently sent me hard and electronic copies of a number of documents including the following, all of which are reproduced as numbered appendices to this report

- Mr. Hughes' Code of Conduct Complaint Form (Appendix 1)
- Exchanges of emails between Cllr Taylor & Ms Francis and Cllr Taylor & Mr. Adrian Stanfield, TMBC Monitoring Officer, (Appendix 2)
- Copies of the TMBC & BGPC Codes of Conduct (Appendix 3)
- Copies of Cllr Taylor's declarations of acceptance of office in respect of TMBC and BGPC, of both of which he is a member (Appendix 4)
- Details of the arrangements for dealing with Code of Conduct complaints under the Localism Act 2011 (Appendix 5)

3.3 Following receipt of my instructions, I arranged to interview Mr. Hughes and Cllr Taylor.

### **4. MR. BARRY HUGHES**

4.1 I met Mr. Hughes (BH) at his home at 11 Harrison Road Borough Green TN15 8RU on Tuesday 1 September. His wife Patricia was also present.

4.2 In accordance with my normal practice and with their consent I made a digital audio recording of our conversation and used it as the basis of a draft note that I subsequently submitted to Mr. & Mrs Hughes for comment. They approved my draft with minor amendments and the following paragraphs are drawn from that note.

- 4.3 BH and his wife have lived at 11 Harrison Road since 1971. Before his retirement, BH worked in marine insurance. He was the first Mayor of TMBC (1983 – 1984), a member of TMBC from 1976 to 1991, a member of BGPC from 1974 until 2007, and a member of Kent County Council from 1995 to 1999. He was on the Local Area Planning Sub-Committee (Area 2) of TMBC throughout his 17 years on TMBC but was never a member of the main Planning Committee.
- 4.4 In relation to the complaint under investigation, BH explained that there had been three planning applications in respect of the adjoining property at 13 Harrison Road. The first was for a complete 'wraparound' two-storey extension, to which BH and his wife and the Parish Council objected. That application was withdrawn.
- 4.5 The second application (which is the one that is the subject of the complaint – Reference Number TM/14/02798/FL) was for a partial two-storey extension. BH and his wife objected to this one too, but the Parish Council did not. The TMBC Planners refused that application under their delegated powers and it went to appeal. PINS rejected the appeal.
- 4.6 A third application was subsequently submitted for a single storey wraparound extension to which BH and his wife did not object. For the record, I was advised that BH & his wife are on good terms with their neighbours, Mr. & Mrs Haslam, who are the applicants.
- 4.7 The Hughes' objection to the subject application was lodged with TMBC in response to a notification that it had been submitted, although Mr. & Mrs Haslam had been round to show the Hughes the plans at an earlier stage. They received the decision notice referred to above and in due course were notified that the applicants had gone to appeal.
- 4.8 They were advised that the appeal was to be dealt with by written representations and that only submissions received prior to the TMBC decision to refuse the application would be taken into account – in other words, no further submissions (for or against the application) would be accepted.
- 4.9 In conversation with one of the local TMBC Members, Cllr Sue Murray, BH learned that Cllr Mike Taylor (MT) had written to PINS and Cllr Murray asked BH if he had seen a copy of the letter. He said that he had not but upon subsequently reading the BGPC minutes, he learned that a copy of MT's letter had been sent to each BGPC member. Mrs Hughes asked the Clerk to BGPC for a copy and she brought one round for them. This was some three months after MT had sent the letter in to PINS. This was the letter the subject of Mr. Hughes' complaint.
- 4.10 Mrs Hughes believes that MT's letter was written after the PINS deadline. This point may be academic, as PINS had said that they would not accept anything above and beyond what had already been seen by the TMBC Planners as part of their consideration of the application. She added that she was not convinced that MT's letter actually went to PINS because she had not been able to trace it on their website. Again, this may simply be because it was effectively debarred from consideration.

- 4.11 BH knows that the letter was copied to all BGPC members as this was recorded in the minutes. He assumes that it went to the members of TMBC Area 2 Planning Committee, but he does not know whether Mr & Mrs Haslam received a copy. He and his wife did not receive a copy direct from Cllr Taylor.
- 4.12 BH's reaction when he saw the letter was '*one of horror*' because it '*seeks to bring all involved into disrepute*'. BH commented that it is also inaccurate in that it describes him as a 'past Leader' of TMBC, a position that he never in fact held.
- 4.13 I explained that MT's stance was (as I understood it) that he wrote the letter in a personal capacity, was merely passing on what had been said to him and that he was not expressing or endorsing the views contained in the letter himself. BH's response was one of incredulity. He thinks it unlikely that whoever MT had spoken to would have been aware of BH's erstwhile position as Deputy Leader of TMBC as it was so long ago.
- 4.14 BH does not believe that the views in MT's letter were expressed to him by others but originated with him. He described MT as 'having history' on a variety of local issues with every previous TMBC Councillor who has represented Borough Green since he arrived in the village some 40 years ago.
- 4.15 Mrs Hughes told me about MT's website ([www.boroughgreen-news.com](http://www.boroughgreen-news.com)) and gave me some printed extracts from it.
- 4.16 BH has no dealings with MT other than seeing him in the village from time to time. He and MT were never on the Parish Council at the same time.
- 4.17 Whilst acknowledging that he is not named in MT's letter, BH considers that there would be few people in the village who would not know that he had been Mayor and a Member of TMBC.
- 4.18 BH is adamant that he has no influence with TMBC, not least because he left the Council 24 years ago and now knows none of the senior officers except Julie Bielby, TMBC Chief Executive, whom he has known since she was very young and whose career he has therefore followed with interest. She would however have had no dealings with the application. In any event the Hughes had no contact with her in relation to the application.
- 4.19 BH knows 'a couple of the longer standing members' but had no contact with them or indeed any other member or officer (other than Julian Moat, the Case Officer) in relation to the application.
- 4.20 The only representation that BH & his wife made was in the form of their objection letter, which was sent to Mr Moat, with whom they had a meeting. Neither of them spoke to Cllr Sue Murray concerning the application – they simply copied her in on their letter of objection.
- 4.21 BH said that there had been a history of TMBC refusing applications for wraparound extensions, particularly in the Harrison Road area.
- 4.22 I told BH that MT's assertion is that the reverse is true – that there is a history of approvals despite BGPC objections and that the refusal of the Haslams'



application was a first. BH said that he does not remember any planning permissions for double storey side extensions on the estate being granted in the last 10 years or so and added that all previous permissions were granted on corner sites which did not compromise the integrity of the estate which was built as an estate for semi-detached houses.

4.23 BH considers that MT has impugned the integrity of TMBC and PINS

*“...because he clearly believes that I have influence and that the Council is open to pressure from outside bodies, which in my experience never has been the case. He is complaining about the planning system itself as it allows people like me to put pressure on them and he must believe that I have some influence with the Inspectorate”.*

## **5. COUNCILLOR TAYLOR’S RESPONSE TO THE COMPLAINT**

5.1 I interviewed Cllr Taylor (MT) in the Parish Office at Borough Green Village Hall on Tuesday 1 September.

5.2 In accordance with my normal practice and with his consent I made a digital audio recording of our conversation and used it as the basis of a draft note that I subsequently submitted to Cllr Taylor for comment. He approved my draft with minor amendments and the following paragraphs are drawn from that note.

5.3 MT’s membership of BGPC initially ran from 2000 to 2003 and then again from 2009 to the present. He was most recently re-elected to office on 6 May 2014. He has been Chairman of BGPC since 2011.

5.4 He is also one of the TMBC Members for Borough Green & Longmill, having initially been elected at a by-election on 9 January 2014 and re-elected in May 2015.

5.5 He has lived in Borough Green since about 1968 and retired from his job in the road haulage industry in 2004.

5.6 He has served on a number of TMBC’s Committees, including Area 2 Planning Committee, the Planning & Transportation Committee, Licensing Committee and the Parish Partnership Panel. He told me that BGPC does not run a committee system but considers all matters at monthly meetings of the whole Council, with occasional EGMs. There are eleven parish councillors.

5.7 MT confirmed that he was aware of the nature of the complaint against him and that the planning application that gave rise to his letter was the second of three submitted by Mr. & Mrs Haslam, the owners of 13 Harrison Road.

5.8 He explained the procedure by which BGPC responds to consultations on planning applications and confirmed that responses are determined by a straightforward vote. Occasionally he or the Clerk might draft a letter of response for discussion in relation to the more complex or more significant applications.

5.9 The application under discussion was refused by TMBC officers under their delegated powers. MT commented that in his view, far too many applications are dealt with under delegated powers. Whilst Members have the usual ability

to call applications in to Committee, MT could see no reason to call this one in.

- 5.10 He said that virtually every application for every extension or new house in Borough Green gets '*rubberstamped*' through by the Officers, regardless of what objections are submitted by residents or the Parish Council. He said that the situation now was that in the knowledge that they will be ignored, BGPC largely don't bother to raise any objections.
- 5.11 I asked MT whether he thought that such applications were by and large approved because they complied with planning policy. He said '*Yes, but planning is flexible and local people should have far more say in how the community is developed*'. He is convinced that the Planning Officers do not listen to local people.
- 5.12 MT confirmed his understanding that in dealing with written representation appeals PINS effectively re-examine the material submitted by the Officers and the Applicants together with any third party representations submitted during the original consideration at Borough level and that there is no opportunity for any further third party representations.
- 5.13 He acknowledged that his letter of 5 December sent direct to PINS would probably have been 'disqualified' under the arrangements just described. He was aware of this when he wrote the letter but still felt that PINS needed to be aware of 'local feeling' that this particular case was not as cut and dried as the TMBC Planning Officers might have made out. He does not think that he received an acknowledgement of the letter.
- 5.14 MT saw the PINS appeal decision letter, but this made no reference to his letter. He is convinced that his letter was ignored.
- 5.15 He told me that 'several people in the village' had spoken to him about the Haslams' application because it had raised concerns that because of BH's history, undue influence had been brought to bear on the Planning Officers.
- 5.16 The letter from the Hughes was, as far as MT was aware, the sole objection, indeed the only representation submitted in relation to the application.
- 5.17 I asked MT about the capacity in which he had written his letter in which he says '*I am writing this personal letter because of concerns voiced to me.*' I asked him whether he would agree that someone reading the letter might at face value infer that he was writing in an official capacity, bearing in mind that it was on TMBC notepaper and that he refers to himself as a ward member of TMBC and Chairman of BGPC.
- 5.18 He considers that this can be looked at both ways and said that it had previously been suggested to him that he is in effect one person because whatever he says, he is saying it as a member of the public, as Chairman of the Parish Council and as a Borough Councillor. He considers that there can be no subdivision and that unless he specifically states the capacity in which he is speaking, such as by saying '*This is my own personal opinion*' he is always all three of those people.
- 5.19 He confirmed that in writing his letter he was 'all three' people – a member of the public and both Borough and Parish Councillor. He had, he said,

previously been advised that even he had said something in a personal capacity, the Code of Conduct would still apply. I commented that I thought this a curious viewpoint.

- 5.20 I asked MT who had voiced the concerns that he mentions in his letter. He said that it had been a total of three people whom he had met in the street. He told me that they all live in the Harrison Road area, although he remarked that none of them submitted an objection to the application.
- 5.21 Whilst MT cannot recall whether any of the three people specifically named BH, he said he knew who they were talking about. He had the impression that they had perhaps talked with the applicant and that the gist of what they said to MT was *'Funny how our complaints never get heeded, but 'he' complains and the application is thrown out'*.
- 5.22 I asked whether MT felt that the one objection from BH had made such a significant difference. He replied: *'In this particular instance, yes, because of who he is.'*
- 5.23 I asked what influence he felt that BH had. He replied: *'Obviously considerable'*.
- 5.24 I asked MT how he knew that BH had such influence. He replied: *'It's a circular argument'*.
- 5.25 I asked where the evidence of that influence and that it is undue was to be found. He replied: *'I know who he is; the people know who he is; the planners know who he is. I think (and so do other people) that there is an element of the TMBC Planners kowtowing to him.'*
- 5.26 I asked MT whether he really believed that the fact that BH had been a member more than twenty years ago had swayed the Planners' judgement. He replied: 'Yes'.
- 5.27 I asked MT whether in his view, having been a prominent member of the community, BH should now refrain from commenting on such issues. He did not believe that BH should be 'disenfranchised' (my word, not his) but that he should be aware of how it would be seen if he did lodge an objection and that objection was taken on board.
- 5.28 I asked: "So he shouldn't object?" MT replied: 'No'.
- 5.29 MT told me that an application had recently been submitted for a substantial development opposite where he lives. He objects on a personal basis because he thinks it is a gross over-use of the site but he said that he would not vote or comment publicly on the application.
- 5.30 He rejected my suggestion that he may well have a pecuniary interest in the application by virtue of the adverse impact that the development might have on the value of his property. He said this: *'How does it affect me? I can only gain any money out of it by selling my property and living on the street'*.
- 5.31 I sought to draw a distinction between MT's position as a potential decision-maker on the application for the development opposite his house and that of

BH as a neighbour with no decision-making role. His response was as follows:

*'Influence is far more important than decisions. The power that people like Barry Hughes and (Cllr) Sue Murray have in the village still carry considerable weight even if they are not in an elected position.'*

- 5.32 I asked MT again where evidence to back his claim was to be found. He replied: *There is a perception on the part of the public and mine'.*
- 5.33 I asked what that perception was based on. He said that this matter was part of a much larger argument in that if such people had had no influence, the last ten years would have been very different, but that this was outside the scope of this investigation.
- 5.34 I asked MT to clarify whether in writing his letter to PINS he was acting as a Councillor or not. He said that he was and that he was a conduit for the concerns (which he shares) that had been expressed to him. He considers himself to be one of those 'reasonable people' who has drawn the conclusion that undue influence had been brought to bear.
- 5.35 I suggested that MT appeared to be distancing himself from the stance expressed in his email of 14 March to Lynn Francis, Deputy Monitoring Officer, in which he said: *'I have made no accusation or inference but as an elected representative, merely passed on concerns raised to me. Even then I have merely noted the conclusions a reasonable person might draw from the sparse evidence available'.*
- 5.36 He said that he personally believed that the concerns were justified.
- 5.37 I asked MT whose integrity he was questioning in his letter. He replied that it was both BH's and the Planning Officers. He considers that the Planning Officers have used the 'plasticity' of the planning system to decide in BH's favour and that the only reason they did so was because of who he is. He is convinced that had the objecting neighbour been someone with no such associations or profile within the village, the application would have been approved. He does not 'point the finger' at any Planning Officer in particular – *'more the system'.*
- 5.38 MT was less than complimentary about BH's integrity but it is neither appropriate nor relevant to rehearse his remarks here as they related to issues outside the scope of this investigation.
- 5.39 I took MT to the paragraphs of the two Codes of Conduct that I considered to be relevant and invited his comments. He does not believe that anyone in the village would take him to task for having written his letter but would support his action because he was standing up for them. He believes that TMBC has already brought itself into disrepute in many ways.
- 5.40 He believes that respect has to be earned and not simply given and that if people do not respect him and his community they cannot expect respect in return. I asked whether he felt that the people and parish of Borough Green had been treated with disrespect by virtue of the rejection of the planning application and he responded that he felt that they are treated with disrespect as a matter of course.

- 5.41 MT remarked that any honest and transparent person should be happy to be challenged. I asked him how TMBC could demonstrate to his satisfaction that they had been honest and transparent in relation to the application. His response was that TMBC had already '*gone past the point of no return*' He said that they should have treated BH's complaint in the same way as they treat most complaints, by ignoring it. This approach is, he said, the Planners' SOP (Standard Operating Procedure).
- 5.42 I asked MT whether his stance was that had TMBC Planners ignored BH's letter of objection, as he appears to wish them to have done, it would have had the merit of consistency of treatment. I put it to him that his fundamental concern was that TMBC have ignored everyone's objections and asked whether this exception to that pattern might not be interpreted as a step in the right direction as far as he was concerned.
- 5.43 His response was that if he had seen a slow change from ignoring public and Parish Council submissions towards accepting that local people should have some say, whether for or against any application, he could accept this as a change, but in his opinion this outcome was a one-off brought about by the status of the objector.
- 5.44 I suggested to MT that there is a difference between 'ignoring' a representation on the one hand and considering it and then coming to a decision that the person making the representation does not like. He suggested that the difference was only one of semantics.
- 5.45 He does not believe that there is a single example within the TMBC records of a representation by local people or BGPC making any difference to a planning application.
- 5.46 I asked MT about his Borough Green News website. This is, he told me, his own site, distinct from the Parish and Community websites, although he runs all three sites. The PC site is, in the main, controlled by BGPC and broadly speaking carries only information whilst the community site covers other areas such as the Village Hall, churches and venues. MT's site provides a platform for comment and garnering support for local issues such as the controversy over the remediation and development of the Isles Quarry site.
- 5.47 I asked MT whether he really believed that the identity of an objector is relevant in planning terms and whether the identity of this particular objector (i.e. BH) really carried any weight with the Planning Officers.
- 5.48 He does not think that the identity of an objector should carry any weight but that in this instance it carried '*100% weight.*'
- 5.49 I asked MT to what he attributed the history of approvals of applications for extensions in the Harrison Road area and whether there was a lack of consistency in approach.
- 5.50 His response was that there was no lack of consistency and that whatever objections were lodged, applications would normally be approved. He is not aware of any history of refusals although he acknowledged that some applications might well have been refused or applications modified at some time.

- 5.51 I asked MT why he thought PINS might have rejected the Haslams' appeal. He said that he did not know whether PINS gave due consideration to the application and could not comment. He does not call into question PINS' integrity *'because they haven't been to look at the site, they don't know who any of the parties are and they must place weight on Planning Officers' reports because they are Planning Officers themselves.'*
- 5.52 I asked MT whether he felt that PINS had assessed the application properly. He replied that *'With the evidence they had to hand, possibly they did. The planning system is deliberately flexible – what matters is how that flexibility is used.'*
- 5.53 Included in the instructions sent to me by Ms Francis was an exchange of emails between herself and Cllr Taylor. In response to Ms Francis advising him of the complaint made against him, Cllr Taylor said that he *'made no accusation or inference but as an elected member merely passed on concerns raised (with him)'* and added this comment: *'I have merely noted the conclusions a reasonable person might draw from the sparse evidence available'*.
- 5.54 A copy of a further email, from Cllr Taylor to fellow TMBC and BGPC Councillor Steve Perry contains the following sentences:
- '...it (the letter to PINS) was in fact sent in a personal capacity. I think the complaint is spurious because I am merely passing on concerns raised to me by residents, nowhere do I personally endorse the view that undue influence had taken place, merely that "a reasonable person might draw that conclusion"'*
- 5.55 This email to Cllr Perry was in response to a message that Cllr Perry had sent in his capacity as a BGPC member to the effect that so far as he was aware, the Parish Council had not been made aware of the circumstances *'triggering such a response from yourself for what appears to be a repetition of a scenario involving your personal relationship with TMBC'*.
- 5.56 Cllr Perry's closing comment was to the effect that steps should be taken to remove any inference of endorsement (of Cllr Taylor's comments) by the Parish Council.

## **6. OTHER INFORMATION AND MATERIAL CONSIDERED**

- 6.1 I sought clarification from the Planning Case Officer Julian Moat on the following points:
- The procedure adopted by PINS for dealing with Written Representations Appeals;
  - How many representations had been received in respect of the application;
  - Whether he was aware of who Mr. Hughes was and

- Whether Mr. Hughes' identity or former 'status' had had any influence on the recommendation in respect of or decision on the planning application.
- 6.2 Mr. Moat confirmed by email that the appeal had been determined on the basis of written representations under the PINS Householder Appeals Service. He believes that PINS do not take into account any further representations (i.e. representations not included as part of the original application) at the appeal stage. He suggested that Cllr. Taylor's letter to PINS during the appeal would not therefore have been taken into account by PINS in determining this appeal although as this was a matter for PINS, he could not say for certain what weight (if any) was attached to this letter.
  - 6.3 TMBC received one letter of representation (an objection) to the planning application. This was from Mr & Mrs Hughes as owners of the adjoining property.
  - 6.4 Mr. Moat was the Case Officer and therefore made the recommendation to refuse the application. Other officers involved in the decision-making process were Marion Geary (Mr. Moat's Team Leader with whom he discussed the case) and Emma Keefe (Development Control Manager) who ultimately signed off the refusal of planning permission.
  - 6.5 All three Officers were apparently aware of who Mr Hughes is but Mr. Moat stressed that this did not make any difference to the determination of the application.
  - 6.6 Finally, Mr. Moat confirmed that the Hughes had been into the Planning Office and that he met them to discuss the scheme and also visited their home prior to the determination of the application the better to understand the implications of the proposed neighbouring development in relation to their property.
  - 6.7 He understood that Mr & Mrs Hughes sent a copy of their objection to the application to Cllr. Sue Murray and asked her to bring the application before Area 2 Committee for a decision should the recommendation have been to grant planning permission.

## **7. WERE THE CODES OF CONDUCT ENGAGED?**

- 7.1 The TMBC and BGPC Codes of Conduct were in force at the time of the incident that gave rise to the complaint, having been adopted on 1 July 2012 and 4 March 2013 respectively. I am satisfied that having signed up to the two Codes on 9 January 2014 and 6 May 2014 respectively, Cllr Taylor knew of their requirements.
- 7.2 The letter of 5 December 2014 was written on TMBC headed notepaper and the subscription to the letter describes him as 'Ward Member, Borough Green & Longmill' and as 'Chair of Borough Green Parish Council'.
- 7.3 In addition, despite the reference in his letter to '*personal capacity*', it is noteworthy that Cllr Taylor states that '*We no longer waste our time tabling objections which we know Officers will always ignore*'. 'We' is a clear reference to the Parish Council and '*the Officers*' a reference to TMBC Planning Officers.

- 7.4 The reference to '*concerns voiced to me*' suggests to me that that Cllr Taylor was acting as a conduit for those concerns – once again, in his capacity as an elected Councillor.
- 7.5 In summary, it is clear to me, both on the face of the letter and from his replies to my questioning (see in particular Paragraphs 5.17 - 5.19) that Cllr Taylor was acting in his capacity as both Borough and Parish Councillor at the material time.
- 7.6 In her instructions to me, Ms Francis rehearsed in some detail the initial 'filtration process' and tests to which Mr. Hughes' complaint had been subjected in accordance with TMBC's arrangements for dealing with such matters under the Localism Act 2011.
- 7.7 Although there had been some discussion about the timeliness of Mr. Hughes' complaint (it having been written some three months and one day after the date of Cllr Taylor's letter to PINS), the Monitoring Officer was satisfied that Mr. Hughes had not actually received a copy of the letter until shortly before he submitted his complaint and not directly from Cllr Taylor as the letter itself seeks to suggest. His complaint was therefore accepted as having been properly submitted in accordance with the adopted arrangements for dealing with complaints.
- 7.8 I have therefore concluded that the Codes of Conduct were engaged, that Cllr Taylor was bound by them and that Mr. Hughes' complaint was properly made, properly accepted and properly falls to be considered in accordance with the 'Local Arrangements'.

## **8. CONSIDERATIONS**

- 8.1 I am satisfied that Cllr Taylor was acting as both Borough and Parish Councillor in writing his letter to PINS and that it therefore fell to him to act in accordance with (inter alia) the two cited paragraphs of the TMBC and BGPC Codes of Conduct.
- 8.2 I afforded Cllr Taylor every opportunity to come up with evidence (my emphasis) of the allegations of undue influence that he not only passed on but also, despite his protestations to the contrary, clearly endorsed – see Paragraph 5.36. He was unable to do so.
- 8.3 Mr. Hughes contended that Cllr Taylor had produced no evidence, but only innuendo and inference and I agree with him.

## **7. CONCLUSIONS**

- 7.1 Cllr Taylor's letter of 5 December 2014 was almost certainly disregarded by PINS because it did not fall to be considered as part of the Written Representations process – certainly he does not recall receiving an acknowledgment of it and Mrs Hughes told me that she could find no reference to it on the PINS website. Cllr Taylor did however distribute the letter himself, although apparently not as widely as he had originally intended.
- 7.2 The letter did not therefore have the effect that Cllr Taylor was presumably seeking to achieve but it did have the effect of calling into question the



integrity and reputation of TMBC in general, of the TMBC Planning Officers (both as to the manner in which they handled applications generally and as to the alleged influence upon them of a former member of the authority), and, whilst not naming him, of Mr. Hughes himself.

- 7.3 That calling into question was based (and Cllr Taylor as good as admitted this to me) largely on feeling and perception, particularly as regards Mr. Hughes' involvement. I find it extraordinary that as an experienced Councillor, Cllr Taylor should suggest (see Paragraphs 5.27 & 5.28) that Mr. Hughes should have remained silent in relation to his concerns about a proposed development of the property next door to his home.
- 7.4 The sentiments and implications expressed in Cllr Taylor's letter not only undermine the reputation of those alluded to, but also display a lack of respect for the professional and personal integrity of Mr. Moat and his fellow TMBC officers and Mr. Hughes alike, all without any form of evidence.
- 7.5 I believe that a reasonable person reading Cllr Taylor's letter, noting that it was written on TMBC headed paper and that he referred to himself as a member of both TMBC and BGPC would be entitled to consider that his remarks and allegations carried implications of disrepute.
- 7.6 In summary, I have concluded that Cllr Taylor has breached:
- (i) The general obligation set out in Paragraph 3 (2) (f), of the TMBC Code of Conduct, namely:  
  
*'You must not conduct yourself in a manner which could reasonable be regarded as bringing your office or the authority into disrepute'*  
  
*and*
  - (ii) the obligation set out at Paragraph 1 of the BGPC Code as to 'Member Obligations', which requires members to:  
  
*'behave in such a way that a reasonable person would regard as respectful.'*

## **8. COMMENTS ON THE DRAFT REPORT**

- 8.1 On 25 September I submitted my draft report by email to Mr. Hughes and to Cllr Taylor inviting their comments. I also submitted a copy to the Deputy Monitoring Officer for review as to the format, content and approach of the report, but not inviting any comments on its conclusions.
- 8.2 Neither Mr. Hughes nor Cllr Taylor wished to make any amendments to the report and my draft conclusions as set out above therefore stand.

## **9. ACKNOWLEDGEMENT**

- 9.1 I should like to acknowledge the assistance and cooperation I have received from those whom I interviewed during the course of this investigation

**Richard Lingard**  
**13 October 2015**

## **APPENDICES**

1. Mr. Hughes' Code of Conduct Complaint Form
2. Exchanges of emails between Cllr Taylor & Ms Francis and Cllr Taylor & Mr. Adrian Stanfield, TMBC Monitoring Officer
3. BGPC Code of Conduct
4. Copies of Cllr Taylor's declarations of acceptance of office in respect of TMBC and BGPC, of both of which he is a member
5. Details of the arrangements for dealing with Code of Conduct complaints under the Localism Act 2011 (which includes the Kent Code of Conduct at Annex on page 3)

## DECISION NOTICE

(of Hearing Panel on 4 January 2016)

### Complaint No. 22/2015

On 4 January 2016, the Hearing Panel of the Tonbridge and Malling Borough Council considered a report of an investigation into the alleged conduct of Councillor Mike Taylor, a member of Tonbridge & Malling Borough Council and Borough Green Parish Council. A general summary of the complaint is set out below.

#### 1. Complaint Summary

- 1.1 The complaint against Cllr Taylor arose from a letter dated 5 December 2014 that he wrote to the Planning Inspectorate ("PINS") in relation to an appeal against the refusal of a planning application for the construction of a residential extension in Harrison Road, Borough Green.
- 1.2 In that letter, Cllr Taylor alleged that *"...the size of extensions approved by TMBC Officer's delegated powers has steadily increased to what we believe to be excessive proportions."* It was also alleged that objections to planning applications were *"always ignored"* by Officers, and that *"because the sole objector [to the application in question] was previously a long serving Parish Councillor, and ex Chair and Vice Chair, a long serving ex member of T&MBC, and past Leader and Mayor, any reasonable person could draw the conclusion that undue influence had been brought to bear on the planning process..."*
- 1.3 The Complainant (who was the objector in question and referred to in Cllr Taylor's letter, although not by name) completed a complaint form, in which he alleged the offending behaviour to be *"an attempt to bring me, the Borough Council and the whole planning process into disrepute by innuendo and inference without any shred of evidence."*

#### 2. Consultation with Independent Person

- 2.1 The Independent Person asked for clarification surrounding the procedure for calling witnesses. The Monitoring Officer explained that it is for the Investigating Officer to determine whether he wishes to call any witnesses to give live evidence. The Hearing Panel has no power to compel any person to attend and there should be no expectation by any party that any individual should or would attend a Hearing Panel. In the present circumstances, no indication had been given that the Complainant would attend the hearing.

2.2 The Monitoring Officer further explained that a Subject Member was entitled to call witnesses, and it was for that Subject Member to arrange their attendance.

2.3 The Independent Person felt that Councillor Taylor had been frank with his views, and that it was a matter for the Panel to come to a decision on the facts as presented.

### 3. Findings

In the following paragraphs, references marked "IO xx" are references to paragraph numbers of the Investigating Officer's report.

#### Facts

3.1 At the time of the Complaint, Cllr Taylor was a serving member of both Borough Green Parish Council ("BGPC") and Tonbridge & Malling Borough Council ("TMBC"). In relation to BGPC, he was Chairman of the Parish Council, and for TMBC, a Ward Member for Borough Green and Long Mill.

3.2 The complaint arose in connection with a planning application for a household extension by the Complainant's neighbours (IO 4.4-4.7), which had been refused under powers delegated to TMBC's Director of Planning, Housing and Environmental Health. There were three such applications: the first (to which BGPC and the Complainant had objected) was withdrawn; the second application (to which the Complainant, but not BGPC, had objected) was refused under delegated powers and subsequently refused at appeal. A third application had been submitted, which had not been objected to by the Complainant or BGPC. It was in connection with the appeal on the second application that Cllr Taylor wrote to PINS.

3.3 The Complainant was a former member and former Mayor of TMBC (his membership ceasing in 1991), and a former member of BGPC (from 1974 until 2007).

3.4 Councillor Taylor believed that because the Complainant had previously been a Borough Councillor (and Mayor), he should have been aware of how an objection by him to a planning application would be viewed in the community (IO 5.27) and that because of his previous position he should not object to planning applications (IO 5.28). However, he also believed the Complainant should not be "disenfranchised" (IO 5.27).

3.5 Councillor Taylor felt that "influence" (by a person's position in the community or previous involvement in local politics) was "more important" than the role of a decision maker on planning applications (IO 5.31). It was, therefore, Councillor Taylor's perception that TMBC Officers had "kowtowed" to the Complainant's objection to the planning application because of his previous position on the

Borough Council (IO 5.25 and 5.32). As such he therefore believed that his concerns, as raised in the letter to PINS, were justified (IO 5.36).

- 3.6 Councillor Taylor agreed that his perception that the Complainant held greater influence could (in part at least) be attributed to the fact that, as an experienced former Borough Council member, the Complainant had a greater knowledge of the planning system and how it worked, than an ordinary member of the public.
- 3.7 During the course of the second application, the Complainant had met with the planning Case Officer dealing with the application on two occasions (IO 6.6). Firstly, at the Council's offices, when the Complainant had visited in order to discuss the proposed development, and secondly at the Complainant's home when the case officer had conducted a visit to better understand the relationship between the two properties.
- 3.8 The Monitoring Officer confirmed, and Cllr Taylor agreed, that there was nothing untoward or improper about the Case Officer visiting the Complainant in connection with the planning application. Cllr Taylor did, however, believe this was "most unusual".
- 3.9 The Case Officer confirmed that he was aware that the Complainant was a former member of the Borough Council but this did not make any difference to the determination of the application (IO 6.5).
- 3.10 Cllr Taylor believed there was no substantive difference between "ignoring" a representation and considering it and then coming to a decision that the person making the representation does not like. He believed the only difference was one of semantics (IO 5.44).
- 3.11 In writing his letter to PINS, Cllr Taylor said he had been careful to state that the letter was a "personal letter" because he was not "speaking on behalf of the Parish Council or Borough Council". He agreed that an official letter from the Parish Council would have to be signed by the Parish Clerk, but it was permissible to write individually as a Parish Councillor or Borough Councillor. However he had written the letter on his official TMBC letterheaded paper in order to give it weight.
- 3.12 He agreed that because the letter stated that it was written "because of concerns voiced to [him]", it could be inferred that he was acting in an official capacity (IO 5.17), but Councillor Taylor believed that he was a Parish Councillor, Borough Councillor and a private individual at all times and therefore believed that the Codes of Conduct would always apply to him unless he specifically said words to the effect of "this is my own personal opinion" (IO 5.18-5.19).

## The Panel's Determination

### *Borough Green Parish Council Code of Conduct*

- 3.13 In respect of the BGPC code of conduct, the Panel found that the code was engaged, as Councillor Taylor had signed the letter as "Chairman of Borough Green Parish Council". Had he been acting in a purely personal capacity, there would have been no reason for doing so. The reason he had signed the letter in that manner had been to give it greater weight.
- 3.14 Furthermore, he had implied, by repeated use of the word "we" in that letter, that he was acting for the Parish Council. In interview with the Investigating Officer he had also confirmed that he was acting in that capacity as he believed he was always "all three people" (i.e. a Borough and Parish Councillor and a member of the public). It was apparent that he was purporting to act in a representative capacity.
- 3.15 The BGPC code requires its members to act in a manner which a reasonable person would regard as respectful. The first paragraph of the letter was disrespectful to the Borough Council's planning officers as it impugned their professional integrity, by stating that they "always ignored" objections made against planning applications by BGPC, despite there being no evidence of this. There is a clear difference between giving no regard to a representation and paying due regard to it, but coming to a conclusion that the person making the representation does not like.
- 3.16 The final paragraph of the letter was disrespectful to the Complainant, who was an ordinary member of the public, because it alleged (with no evidence) that the Complainant had sought to improperly influence a planning decision.
- 3.17 The letter as a whole was disrespectful to the Borough Council in general, and to its planning officers in particular.

### *Tonbridge and Malling Borough Council Code of Conduct*

- 3.18 In respect of the Tonbridge and Malling Borough Council Code of Conduct, the Panel found that the code was engaged, as the letter was written on official TMBC letterheaded paper, which describes Cllr Taylor as a "ward member for Borough Green and Long Mill" and gives a TMBC email contact address. Councillor Taylor confirmed that he had used this letterheaded paper because he believed it would carry more weight with the planning inspectorate.
- 3.19 In interview with the Investigating Officer he had also confirmed that he was acting in that capacity as he believed he was always "all three people" (i.e. a Borough and Parish Councillor and a member of the public). It was apparent that he was purporting to act in a representative capacity.



- 3.20 The letter implies that the Borough Council ignores its residents and that officers allow themselves to be unduly influenced.
- 3.21 It was clear from the oral evidence of Cllr Taylor that there is a long-standing dispute between himself and the complainant. It appeared that in writing the letter, Councillor Taylor was misusing his position to call into question the actions of a resident, who would not have the same ability to respond to such allegations as Councillor Taylor does. This is not acceptable conduct for a Councillor.
- 3.22 The Panel accepts that an ordinary member of the public might perceive that a former Borough Council member might retain some influence. That perception might, in part, arise from the greater knowledge which a former member would have about how the planning system operates than an average member of the public.
- 3.23 However, there was no evidence in this case that any influence was exerted by the Complainant. Even if there was any influence, there is no evidence that any such influence was improper.
- 3.24 The Panel found it surprising that Councillor Taylor, as a knowledgeable member of the authority, should not have approached the appropriate officer to enquire into the process followed in determining the planning application and investigated the evidence to support his assertion that the Council had behaved incorrectly, in advance of the letter to the Inspectorate. It was notable that the planning application was not "called in" by Councillor Taylor (which as ward member for the area he would have been entitled to do) for determination by a planning committee, nor by any of his ward colleagues.
- 3.25 The Panel therefore concluded that Councillor Taylor's conduct was such that it would cause the reputation of the Authority to suffer, as viewed by a reasonable onlooker. Therefore, Councillor Taylor's conduct brought both his office, as a councillor of the Borough Council, and the Authority as a whole, into disrepute.
- 3.26 In coming to these conclusions in respect of both codes of conduct, the Panel had regard to the protection afforded to the right to freedom of expression as set out in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Human Rights Act 1998. The panel had the benefit of written legal advice, which is annexed to this decision notice, and agreed with the conclusions set out in that advice that in the circumstances it was justified in interfering with Cllr Taylor's right to freedom of expression by finding a breach of the codes.

#### 4. Sanctions Applied

4.1 The Monitoring Officer drew the Panel's attention to the questions set out at paragraph 4.4 of Annexe 4 of the Council's Arrangements for dealing with Code of Conduct Complaints, which the Panel had to consider when determining which (if any) sanctions to apply. He highlighted that any sanctions had to be reasonable and proportionate. As to the questions set out in paragraph 4.4, he made the following representations:

(a) What was the subject member's intention and did they know that they were failing to follow the Borough/Parish Council's code of conduct?

- Before Cllr Taylor's letter to PINS, the Monitoring Officer had had an exchange of emails with Councillor Taylor, regarding his concerns about the matters which Cllr Taylor was raising.

(b) Did the subject member receive advice from officers before the incident and was that advice acted on in good faith?

- As in (a) above. The email exchange had taken place on 3 December 2014 and Councillor Taylor's response to the advice was that he felt he was being "browbeaten" by the Monitoring Officer.

(c) Has there been a breach of trust

- No breach of trust had occurred

(d) Has there been financial impropriety

- No financial impropriety had occurred

(e) What was the result/ impact of failing to follow the Code of Conduct

As the Investigating Officer had concluded (para 7.4 of report), the sentiments and implications expressed in Cllr Taylor's letter not only undermine the reputation of those alluded to, but also display a lack of respect for the professional and personal integrity of Mr Moat and his fellow TMBC Officers and Mr Hughes alike, without any form of evidence.

(f) How serious was the incident?

As the Investigating Officer concluded, the letter from Cllr Taylor called into question the integrity and reputation of the Borough Council in general, of TMBC Planning Officers (both as to the manner in which they handled applications generally and as to the alleged influence upon them of a former member of the authority) and, whilst not naming him, of Mr Hughes himself.



(g) Does the subject member accept that they were at fault?

- The MO felt that Cllr Taylor should be allowed to answer this question for himself, but the Monitoring Officer assumed he did not.

(h) Did the subject member apologise to the relevant persons?

- No apology had been offered by Councillor Taylor

(i) Has the subject member previously been reprimanded or warned for similar misconduct?

- Yes, the subject member had previously been sanctioned by a Standards Hearing Panel for bringing his office and the authority into disrepute under the TMBC code, by a decision dated 12 October 2015.

(j) Has the subject member previously breached the Borough or Parish Council's Code of Conduct?

- Yes (in respect of the Borough Council code), as described in (i) above.

(k) Is there likely to be a repetition of the incident?

- Councillor Taylor appears to consider that his relationship with TMBC has "passed the point of no return". He continues to make accusations about the Complainant on his website. The Monitoring Officer provided the Panel with a printed copy of a recent entry on that website which makes allegations about the Complainant.

4.2 The Independent Person believed that some issues might be resolved by further training, but it would be a matter for Councillor Taylor whether or not he would accept such training.

4.3 Councillor Taylor made no representations as to the form of sanctions which might be applied. He expressed reservations about the relevance of his email exchanges with the legal department or why (in relation to the written advice provided regarding his Article 10 rights) the level of seniority of officers had any bearing.

4.4 Having considered all of these matters, the Panel resolved to apply the following sanctions:

4.4.1 In relation to the BGPC code, the Panel's findings would be reported to the Parish Council. In addition, the Panel's findings would be published as follows:

- publication on the TMBC website;
- by email to all Borough Councillors and Borough Green Parish Councillors;
- by email to the local press; and

- by email to all Parish Clerks

4.4.2 In relation to the TMBC code, the Panel recommends that the Borough Council issues a formal censure. In addition, the Panel will send a formal letter to Councillor Taylor, the terms of which will be finalised by the Panel in due course. The Panel's findings are also to be published in the same manner as set out in 4.4.1 above.

4.5 In coming to its conclusions on these sanctions, the Panel again had regard to Cllr Taylor's right to freedom of expression and the written legal advice provided. The Panel was satisfied that these sanctions were the minimum required to uphold the public interest in local government being conducted to standards which maintain public confidence.

**5. Appeal**

There is no right of appeal against this decision of the Hearing Panel.

**6. Notification of Decision**

This decision notice is sent to:

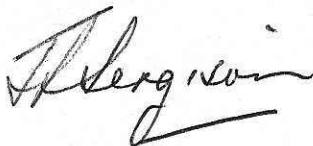
Councillor Mike Taylor

Complainant

Clerk to the Borough Green Parish Council

4<sup>th</sup> January 2016

Signed



Cllr Janet Sergison

Chairman of the Hearing Panel

Tonbridge & Malling Borough Council

# ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

## 1. Context

- 1.1 These Arrangements are made under section 28 of the Localism Act 2011. They set out the process that the Borough Council has adopted for dealing with complaints that an elected or co-opted member or parish councillor has failed to comply with the Code of Conduct.

## 2. Interpretation

- 2.1 'Borough Council' means the Tonbridge and Malling Borough Council.
- 2.2 'Code of Conduct' means the Code of Conduct, which the Borough has adopted under section 27(2) of the Localism Act 2011 at Annex 1 to these Arrangements.
- 2.3 'Complainant' means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Code of Conduct.
- 2.4 'Disclosable Pecuniary Interest' means those disclosable pecuniary interests that meet the definition prescribed by regulations (as amended from time to time) as set out in Annex 2 to the Code of Conduct.
- 2.5 'Hearing Panel' means the panel appointed by the Borough Council to determine the outcome of any complaint alleging a breach of the Code of Conduct by a Subject Member in accordance with these Arrangements.
- 2.6 'Independent Person' means a person or persons appointed by the Borough Council under section 28(7) of the Localism Act 2011:
- (a) whose views must be sought and taken into account by the Borough Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member;
  - (b) who may be consulted by the Subject Member about the complaint.
- 2.7 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the Borough Council, an officer of another authority or an external investigator.
- 2.8 'Monitoring Officer' is a senior officer of the Borough Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the arrangements for dealing with any complaint alleging a breach of the Code of Conduct by a Subject Member. It includes any other officer of the Borough Council nominated by the Monitoring Officer to act on their behalf.
- 2.9 'Parish Council' means the relevant parish/town council within the Borough of Tonbridge and Malling

- 2.10 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.
- 2.11 'Subject Member' means an elected member or co-opted member of the Borough or Parish Council against whom a complaint has been made alleging a breach the Code of Conduct.

### **3. Appointment of Independent Person**

- 3.1 The Council shall appoint the Independent Person (s) upon such terms as to remuneration and expenses as may be determined by the Borough Council from time to time.
- 3.2 The Independent Person (s) shall be treated as if they were a member of the Borough Council for the purposes of the Borough Council's arrangements for indemnifying and insuring its Members.

### **4. Making a complaint**

- 4.1 A complaint alleging a breach of the Code of Conduct by a Subject Member must be made in writing and addressed to the Monitoring Officer using the Complaint Form at Annex 2 to these Arrangements. Complainants who find difficulty in making their complaint in writing (e.g. because of a disability), will be offered assistance.
- 4.2 The Subject Member will normally be informed of the identity of the Complainant and details of the complaint made against them, but the Complainant's identity and/or details of their complaint may be withheld at the Complainant's request if it appears to the Monitoring Officer that there are sound reasons for granting such a request (refer to paragraph 5 of Annex 2 to these Arrangements).
- 4.3 The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days of receiving it. At the same time (and subject to para. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 2 of Annex 2 to these Arrangements.

### **5. Criminal conduct**

- 5.1 In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:
- (a) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the Authority;
  - (b) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;
  - (c) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
  - (d) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you disclose it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;

- (e) take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
- (f) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.

5.2 Where a complaint against a Subject Member relates to conduct of a criminal nature referred to above, the Monitoring Officer will deal with the complaint in accordance with paragraph 4(4) of Annex 2 to these Arrangements.

## **6. Anonymous complaints**

6.1 Complainants must provide their full name and address. An anonymous complaint will only be accepted by the Monitoring Officer in consultation with the Independent Person, providing it is accompanied by corroborating evidence that indicates to the Monitoring Officer that it is in the public interest to accept the complaint.

## **7. Role of Independent Person**

7.1 The Independent Person(s) must be consulted and have their views taken into account before the Authority makes a finding as to whether a Member has failed to comply with the Code or decides on action to be taken in respect of that Member. At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.

## **8. Preliminary tests**

8.1 The Monitoring Officer will, in consultation with the Independent Person(s), Chairman and Vice-Chairmen of the Joint Standards Committee, put the complaint through a number of preliminary tests, in accordance with paragraph 1 of Annex 2 to these Arrangements.

8.2 In the event that the Independent Person is unavailable or unable to act, the time limits specified in paragraph 1 of Annex 2 to these Arrangements may either be extended by the Monitoring Officer or the Monitoring Officer may act by consulting only with Chairman and Vice-Chairmen of the Joint Standards Committee in taking the decision or action.

## **9. Informal resolution**

9.1 The Monitoring Officer, in consultation with the Independent Person(s), Chairman and Vice-Chairmen of the Joint Standards Committee, may consider that the complaint can be resolved informally at any stage in accordance with paragraph 6 of Annex 2 to these Arrangements.

## **10. Investigation**

10.1 If the Monitoring Officer, in consultation with the Independent Person, Chairman and Vice-Chairmen of the Joint Standards Committee, decides that the complaint merits formal investigation, they will, within 10 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform the Parties of the appointment.

10.2 The Investigating Officer will investigate the complaint in accordance with Annex 3 to these Arrangements.

## **11. Hearing**

- 11.1 If the Monitoring Officer, in consultation with the Independent Person, Chairman and Vice-Chairmen of the Joint Standards Committee, considers that informal resolution is not appropriate or is unlikely to be achieved, then they will convene a meeting of the Hearing Panel to determine the outcome of the complaint in accordance with Annex 4 to these Arrangements.

## **12. Sanctions**

- 12.1 Where a Subject Member has been found by the Hearing Panel to have breached the Code of Conduct, the Hearing Panel may apply any one or more sanctions in accordance with paragraph 4 of Annex 4 to these Arrangements.

## **13. Appeal**

- 13.1 There is no right of appeal for the Complainant or the Subject Member against decisions of either the Monitoring Officer or the Hearing Panel.

## **14. Revision of these Arrangements**

- 14.1 The Borough Council may by resolution agree to amend these Arrangements and has delegated to the Monitoring Officer and the Hearing Panel the right to depart from these Arrangements, where considered expedient to do so in order to secure the effective and fair consideration of any matter.

## Kent Code of Conduct for Members

### Preamble

- (A) The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
- (B) The Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011, which are set out in Annex 1.
- (C) This Preamble and Annex 1 do not form part of the Code, but you should have regard to them as they will help you to comply with the Code.
- (D) If you need guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- (E) In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:
  - (g) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of becoming, or being re-elected or re-appointed, a Member or Co-opted Member of the Authority;
  - (h) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of you becoming aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;
  - (i) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
  - (j) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of disclosing it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
  - (k) take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted
  - (l) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- (F) Any written allegation received by the Authority that you have failed to comply with the Code will be dealt with under the arrangements adopted by the Authority for such purposes. If it is found that you have failed to comply with the Code, the Authority may have regard to this failure in deciding whether to take action and, if so, what action to take in relation to you.

## THE CODE

### 1. Interpretation

In this Code:

**“Associated Person”** means (either in the singular or in the plural):

- (a) a family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- (e) any body in respect of which you are in a position of general control or management:
  - (i) exercising functions of a public nature; or
  - (ii) directed to charitable purposes; or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

**“Authority”** means Tonbridge and Malling Borough Council

**“Authority Function”** means any one or more of the following interests that relate to the functions of the Authority:

- (a) housing - where you are a tenant of the Authority provided that those functions do not relate particularly to your tenancy or lease; or
- (b) school meals or school transport and travelling expenses - where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which your child attends;
- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 - where you are in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to members of the Authority;
- (e) any ceremonial honour given to members of the Authority;
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

**“Code”** means this Code of Conduct.

**“Co-opted Member”** means a person who is not an elected member of the Authority but who is a member of:

- (a) any committee or sub-committee of the Authority, or
- (b) and represents the Authority on, any joint committee or joint sub-committee of the Authority; and
- (c) who is entitled to vote on any question that falls to be decided at any Meeting.

**“Disclosable Pecuniary Interest”** means those interests of a description specified in regulations made by the Secretary of State (as amended from time to time) as set out in Annex 2 and where either it is:



- (a) your interest or
- (b) an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners and provided you are aware that the other person has the interest.

**“Interests”** means Disclosable Pecuniary Interests and Other Significant Interests.

**“Meeting”** means any meeting of:

- (a) the Authority;
- (b) the executive of the Authority;
- (c) any of the Authority's or its executive's committees, sub-committees, joint committees and/or joint sub-committees.

**“Member”** means a person who is an elected member of the Authority and includes a Co-opted Member.

**“Other Significant Interest”** means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) which:

- (a) affects the financial position of yourself and/or an Associated Person; or
- (b) relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an Associated Person;

and which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

**“Register of Members’ Interests”** means the Authority's register of Disclosable Pecuniary Interests established and maintained by the Monitoring Officer under section 29 of the Localism Act 2011.

**“Sensitive Interest”** means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

## **Scope**

2. You must comply with this Code whenever you act in your capacity as a Member or Co-opted Member of the Authority.

## **General obligations**

3. (1) You must, when using or authorising the use by others of the resources of the Authority:

- (a) act in accordance with the Authority's reasonable requirements; and
- (b) ensure that such resources are not used improperly for political purposes (including party political purposes).

- (2) You must not:

- (a) bully any person;
- (b) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation

- or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with this Code;
- (c) do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
  - (d) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
    - (i) you have the written consent of a person authorised to give it; or
    - (ii) you are required by law to do so; or
    - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
    - (iv) the disclosure is:
      - reasonable and in the public interest; and
      - made in good faith and in compliance with the reasonable requirements of the Authority;
  - (e) prevent another person from gaining access to information to which that person is entitled by law;
  - (f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;
  - (g) use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

#### **Registering Disclosable Pecuniary Interests**

- 4. (1) You must, before the end of 28 days beginning with the day you become a Member or Co-opted Member of the Authority, or before the end of 28 days beginning with the day on which this Code takes effect (whichever is the later), notify the Monitoring Officer of any Disclosable Pecuniary Interest.
- (2) In addition, you must, before the end of 28 days beginning with the day you become aware of any new Disclosable Pecuniary Interest or change to any interest already registered, register details of that new interest or change, by providing written notification to the Monitoring Officer.
- (3) Where you have a Disclosable Pecuniary Interest in any matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter), then if the interest is not registered in the Register of Members' Interests and is not the subject of a pending notification, you must notify the Monitoring Officer before the end of 28 days beginning with the day you become aware of the existence of the interest.

#### **Declaring Interests**

- 5. (1) Whether or not a Disclosable Pecuniary Interest has been entered onto the Register of Members' Interests or is the subject of a pending notification, you must comply with the disclosure procedures set out below.
- (2) Where you are present at a Meeting and have a Disclosable Pecuniary Interest or Other Significant Interest (and you are aware that you have such an interest) in any matter to be considered, or being considered, at the Meeting, you must:

- (a) disclose the Interest; and
  - (b) explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6, below); and unless you have been granted a dispensation:
  - (c) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
  - (d) withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and
  - (e) not seek improperly to influence a decision about that business.
- (3) Where you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where you are acting alone in the course of discharging a function of the Authority (including making an executive decision), you must:
- (a) notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and
  - (b) not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and
  - (c) not seek improperly to influence a decision about the matter.
- (4) Where you have an Other Significant Interest in any business of the Authority, you may attend a Meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. Having made your representations, given evidence or answered questions you must:
- (a) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
  - (b) withdraw from the Meeting room in accordance with the Authority's Procedure Rules.

### **Sensitive Interests**

6. (1) Where you consider that the information relating to any of your Disclosable Pecuniary Interests is a Sensitive Interest, and the Monitoring Officer agrees, the Monitoring Officer will not include details of the Sensitive Interest on any copies of the Register of Members' Interests which are made available for inspection or any published version of the Register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.
- (2) You must, before the end of 28 days beginning with the day you become aware of any change of circumstances which means that information excluded under paragraph 6(1) is no longer a Sensitive Interest, notify the Monitoring Officer asking that the information be included in the Register of Members' Interests.
- (3) The rules relating to disclosure of Interests in paragraphs 5(2) and (3) will apply, save that you will not be required to disclose the nature of the Sensitive Interest, but merely the fact that you hold an interest in the matter under discussion.

### **Gifts and Hospitality**

7. (1) You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and

hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by you (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which you have been elected or appointed or when you are acting as representative of the Authority. You must also register the source of the gift, benefit or hospitality.

- (2) Where any gift, benefit or hospitality you have received or accepted relates to any matter to be considered, or being considered at a Meeting, you must disclose at the commencement of the Meeting or when the interest becomes apparent, the existence and nature of the gift, benefit or hospitality, the person or body who gave it to you and how the business under consideration relates to that person or body. You may participate in the discussion of the matter and in any vote taken on the matter, unless you have an Other Significant Interest, in which case the procedure in paragraph 5 above will apply.
- (3) You must continue to disclose the existence and nature of the gift, benefit or hospitality at a relevant Meeting, for 3 years from the date you first registered the gift, benefit or hospitality.
- (4) The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

## **Dispensations**

- 8.(1) The General Purposes Committee or the Monitoring Officer (where authorised) may, on a written request made to the Monitoring Officer (as appointed Proper Officer for the receipt of applications for dispensation) by a Member with an Interest, grant a dispensation relieving the Member from either or both of the restrictions on participating in discussions and in voting (referred to in paragraph 5 above).
- (2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the General Purposes Committee or the Monitoring Officer (where authorised) considers that:
  - (a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
  - (b) without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or
  - (c) granting the dispensation is in the interests of persons living in the Authority's area; or
  - (d) without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive; or
  - (e) it is otherwise appropriate to grant a dispensation.
- (3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- (4) Paragraph 5 above does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph 8.

## ANNEX 1

### THE SEVEN PRINCIPLES OF PUBLIC LIFE

In accordance with the Localism Act 2011, and in order to help maintain public confidence in this Authority, you are committed to behaving in a manner that is consistent with the following principles. However, it should be noted that these Principles do not create statutory obligations for Members and do not form part of the Code. It follows from this that the Authority cannot accept allegations that they have been breached.

**SELFLESSNESS:** You should act solely in terms of the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

**INTEGRITY:** You should exercise independent judgment and not compromise your position by placing yourself under obligations to outside individuals or organisations who might seek to influence you in the performance of your official duties. You should behave in accordance with all legal obligations, alongside any requirements contained within this Authority's policies, protocols and procedures, including on the use of the Authority's resources. You should value your colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government. You should treat people with respect, including the organisations and public you engage with and those you work alongside.

**OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, you should make choices on merit. You should deal with representations or enquiries from residents, members of the communities and visitors fairly, appropriately and impartially. You should champion the needs of the whole community and especially your constituents, including those who did not vote for you.

**ACCOUNTABILITY:** You are accountable to the public for your decisions and actions and should fully co-operate with whatever scrutiny is appropriate to your office.

**OPENNESS:** You should be as open and as transparent as possible about all the decisions and actions that you take to enable residents to understand the reasoning behind those decisions and to be informed when holding you and other Members to account. You should give reasons for your decisions and restrict information only when the wider public interest or the law clearly demands it. You should listen to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

**HONESTY:** You have a duty to declare interests relating to your public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. You should not allow other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' casework, the interests of the Authority's area or the good governance of the Authority in a proper manner.

**LEADERSHIP:** Through leadership and example you should promote and support high standards of conduct when serving in your public post. You should provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Authority.

## ANNEX 2

### Disclosable Pecuniary Interests, as prescribed by regulations, are as follows:

The descriptions on Disclosable Pecuniary Interests are subject to the following definitions:

“**the Act**” means the Localism Act 2011

“**body in which the relevant person has a beneficial interest**” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest

“**director**” includes a member of the committee of management of an industrial and provident society

“**land**” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income

“**M**” means a member of the relevant authority

“**member**” includes a co-opted member

“**relevant authority**” means the authority of which M is a member

“**relevant period**” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1), or section 31(7), as the case may be, of the Act

“**relevant person**” means M or any other person referred to in section 30(3)(b) of the Act (the Member’s spouse, civil partner, or somebody with whom they are living as a husband or wife, or as if they were civil partners).

“**securities**” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

Interest	Description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.  This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour

	Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:  (a) under which goods or services are to be provided or works are to be executed; and  (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge):  (a) the landlord is the relevant authority; and  (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where:  (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and  (b) either  (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or  (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

## PROCEDURE ON RECEIPT OF A COMPLAINT

### 1. Preliminary tests

1.1 The complaint will be assessed by the Monitoring Officer in consultation with the Independent Person(s) and Chairman and Vice-Chairmen of the Joint Standards Committee against the legal jurisdiction test in paragraph 1.2 and, if applicable, the local assessment criteria test in paragraph 1.4 below.

#### 1.2 Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the person complained of a member of the Borough or Parish Council at the time of the alleged conduct?
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- (f) The complaint is about dissatisfaction with the Borough or Parish Council's decisions, policies and priorities, etc.

1.3 If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

#### 1.4 Local assessment criteria test:

If the complaint satisfies the jurisdiction test, the Monitoring Officer will then apply the following local assessment criteria test:

- (a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) The complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (d) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious;
- (f) The alleged misconduct happened more than 3 months ago\*;
- (g) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;



- (j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (k) The complaint is about a deceased person;
- (l) The complaint is about a person who is no longer a Borough or Parish Councillor or Co-opted Member.

\* The Monitoring Officer may depart from this test where he/ she is satisfied that exceptional circumstances exist. In determining whether such exceptional circumstances exist the Monitoring Officer will have regard to the seriousness of the alleged breach, the time when the alleged breach first came to the attention of the Complainant and the consequences of the delay for a fair disposal of the complaint.

- 1.5 If one or more of the local assessment criteria applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

## **2. Notification of complaint to Subject Member**

- 2.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member [and, if applicable, the Parish Clerk].
- 2.2 The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint within 10 working days, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below). Views received from the Subject Member [and/or Parish Clerk] after the 10 working day time limit may be taken into account at the discretion of the Monitoring Officer, providing the views are received before the Monitoring Officer issues their written decision on how the complaint will be dealt with.

## **3. Asking for additional information**

- 3.1 The Monitoring Officer may ask the Complainant and the Subject Member [and, if applicable, the Parish Clerk] for additional information before deciding how to deal with the complaint.

## **4. What process to apply - informal resolution or investigation and/or no action?**

- 4.1 The Monitoring Officer may at any stage (whether without the need for an investigation or before or after the commencement or conclusion of an investigation) seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer or the Borough/ Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.2 The Monitoring Officer in consultation with the Independent Person(s) and Chairman and Vice-Chairmen of the Joint Standards Committee may refer the complaint for investigation when:

- (a) it is serious enough, if proven, to justify the range of sanctions available to the Joint Standards Committee (see paragraph 4 of Annex 4 to these Arrangements);
  - (b) the Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Borough or Parish Council and there is no other avenue left to deal with it short of investigation and, in considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.
- 4.3 Where the complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 3 to these Arrangements.
- 4.4 If the complaint identifies criminal conduct or breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. In such cases, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and in consultation with the Independent Person will apply the local assessment criteria test in paragraph 1.4 above.
- 4.5 The Monitoring Officer in consultation with the Independent Person(s) and Chairman and Vice-Chairmen of the Joint Standards Committee, will take no action on the complaint when one or more of the following apply:
- (a) on-going criminal proceedings or a police investigation into the Subject Member's conduct or where the complaint is suspended in accordance with paragraph 4.4 above;
  - (b) investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings;
  - (c) the investigation might prejudice another investigation or court proceedings;
  - (d) on-going investigation by another prosecuting or regulatory authority;
  - (e) genuine long term (3 months or more) unavailability of a key party;
  - (f) serious illness of a key party.
- 4.6 Within 20 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the format of the Decision Notice template (appended to this Annex 2):
- (a) not to refer the complaint for investigation; or
  - (b) to refer the complaint for investigation; or
  - (c) to apply the informal resolution process either before or after an investigation;  
or

- (d) following investigation, to refer the complaint to the [Hearing Panel]; or
- (e) to take no action and close the matter; or
- (f) to refer the complaint to the relevant political group leader for action.

4.7 There is no right of appeal against the Monitoring Officer's decision. However, in the event that the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.

## **5. Confidentiality**

5.1 If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer in consultation with the Independent Person when they initially assess the complaint (see paragraph 1 above).

5.2 As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an investigation. The Monitoring Officer may withhold the Complainant's identity if they are satisfied that the Complainant has reasonable grounds for believing that they or any other person (e.g. a witness):

- (a) is either vulnerable or at risk of threat, harm or reprisal;
- (b) may suffer intimidation or be victimised or harassed;
- (c) works closely with the Subject Member and are afraid of the consequences, e.g. fear of losing their job;
- (d) suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this);
- (e) may receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing Borough or Parish Council service provision or any tender/contract they may have with or are about to submit to the Borough or Parish Council.

OR where early disclosure of the complaint:

- (a) may lead to evidence being compromised or destroyed; or
- (b) may impede or prejudice the investigation; or
- (c) would not be in the public interest.

5.3 Relevant public interest factors favouring disclosure (not an exhaustive list) include:

- (a) to facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others;

- (b) to raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern;
- (c) justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large;
- (d) bringing out in the open serious concerns about the behaviour/conduct of an individual.

5.4 The Monitoring Officer, in consultation with the Independent Person(s) and Chairman and Vice-Chairmen of the Joint Standards Committee, will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have their identity (or that of another person) withheld from the Subject Member. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, within 15 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

## **6. Informal resolution**

6.1 The Monitoring Officer may after consultation with the Independent Person(s) and Chairman and Vice-Chairmen of the Joint Standards Committee seek to resolve a complaint informally at any stage in the process, whether without the need for an investigation or before or after an investigation has been commenced or concluded. The Monitoring Officer will consult with the Complainant and the Subject Member to agree what they consider to be a fair resolution which will help to ensure higher standards of conduct for the future.

6.2 Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:

- (a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related Borough/ Parish Council procedures; or
- (b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
- (c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- (d) The conduct complained of appears common to a number of members of the Borough or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Borough/ Parish Council procedures, etc; or
- (e) The conduct complained of appears to the Monitoring Officer not to require a formal censure; or
- (f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Borough/ Parish Council; or
- (g) The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
- (h) The complaint consists of allegations and retaliatory allegations between councillors; or
- (i) The complaint consists of allegations about how formal meetings are conducted; or

- (j) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

6.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other councillors including the whole Borough/ Parish Council where it may be useful to address systemic behaviour:

- (a) training;
- (b) conciliation/mediation;
- (c) mentoring;
- (d) apology;
- (e) instituting changes to the Borough or Parish Council's procedures;
- (f) conflict management;
- (g) development of the Borough or Parish Council's protocols;
- (h) other remedial action by the Borough or Parish Council;
- (i) other steps (other than investigation) if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

6.4 If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer will report the matter to the Joint Standards Committee [and, if applicable, the Parish Council] for information, but will take no further action.

6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer may after consultation with the Independent Person(s) and the Chairman and Vice-Chairmen of the Joint Standards Committee reconsider whether the complaint should be investigated, or an investigation concluded.

## EXAMPLE TEMPLATE – COMPLAINT FORM

The complaint form may be viewed on the Council's website via the following link -

<http://www.tmbc.gov.uk/services/council-and-democracy/councillors,-democracy-and-elections/council-constitution/articles/standards-committee>

## **EXAMPLE TEMPLATE - DECISION NOTICE (of the Monitoring Officer): e.g. REFERRAL FOR INVESTIGATION**

*Parties should take care when passing on information that is in the notice or about the notice. For example, some details such as names and addresses may be confidential or private in nature, or may be personal information.*

### **Complaint No:**

### **Complaint**

On [insert date], the Monitoring Officer considered a complaint from [insert name of complainant] concerning the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

### **Complaint summary**

[Summarise complaint in numbered paragraphs]

### **Consultation with Independent Person(s)**

[Summarise the Independent Person(s) views in numbered paragraphs]

### **Consultation with the Chairman & Vice-Chairmen of the Joint Standards Committee**

[Summarise their views in numbered paragraphs]

### **Decision**

Having consulted and taken into account the views of the Independent Person(s) and Chairman and Vice-Chairmen of the Joint Standards Committee, the Monitoring Officer decided to refer the complaint for investigation.

### **Potential breaches of the Code of Conduct identified**

At this stage, the Monitoring Officer is not required to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following paragraphs of the Code of Conduct. The Monitoring Officer has appointed [insert name] as the Investigating Officer.

Please note that it will be for the Investigating Officer to determine which paragraphs are relevant, during the course of the investigation.

[detail relevant Code of Conduct paragraphs]

### **Notification of decision**

This decision notice is sent to the:

- Complainant

- Member against whom the complaint was made
- [Clerk to the relevant Parish or Town Council]
- Kent County Council's Monitoring Officer (*applicable only where the Subject Member is serving at both [Borough] [City] [District] and County level*)

### **What happens now**

The complaint will now be investigated under the Borough Council's Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011.

### **Appeal**

There is no right of appeal against the Monitoring Officer's decision.

### **Additional Help**

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on [insert telephone number] or email [insert email address]. We welcome calls via [Typetalk](#)

**Signed:**

**Date**

**Print name:**

Monitoring Officer of the Tonbridge and Malling Borough Council

Gibson Building

Gibson Drive

Kings Hill

West Malling

Kent ME19 4LZ



## **2. PROCEDURE FOR INVESTIGATING THE COMPLAINT**

### **1. Preliminaries**

- 1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under the Data Protection Act 1998, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.
- 1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.
- 1.3 The Subject Member and the Complainant will be advised that the investigation is for fact finding purposes only.
- 1.4 Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.5 The Investigating Officer will not make recommendations on sanctions.
- 1.6 Within 10 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment and:
  - (a) provide details of the complaint to the Subject Member;
  - (b) detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
  - (c) detail the sections of the Code of Conduct that appear to be relevant to the complaint;
  - (d) request contact details of any potential witnesses;
  - (e) require that confidentiality is maintained and that details of the complaint not be disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.
- 1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.
- 1.8 The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the [Monitoring Officer] [Hearing Panel].

### **2. The draft report**

- 2.1 On the conclusion of their investigation the Investigating Officer will issue a draft report (clearly labelled 'DRAFT') to the Monitoring Officer for review.
- 2.2 Following review by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be clearly labelled 'CONFIDENTIAL' and will detail:

- (a) the relevant provisions of the law and the relevant paragraphs of the Code of Conduct;
- (b) a summary of the complaint;
- (c) the Subject Member's response to the complaint;
- (d) relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation;
- (e) a list of any documents relevant to the matter;
- (f) a list of those persons/organisations who have been interviewed;
- (g) a statement of the Investigating Officer's draft findings of fact and reasons;
- (h) the Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct;
- (i) that the Investigating Officer will present a final report once they have considered any comments received on the draft.

2.3 Once the Investigating Officer has received any responses from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled 'FINAL'.

### **3. Consideration of Investigating Officer's final report**

3.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person(s) and Chairman and Vice-Chairmen of the Joint Standards Committee.

3.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person(s), Chairman and Vice-Chairmen of the Joint Standards Committee, concludes that there is no evidence of a failure to comply with the Code of Conduct; they will inform the Parties in writing that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

3.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person(s), Chairman and Vice-Chairmen of the Joint Standards Committee concludes that there is evidence of a failure to comply with the Code of Conduct, they will either:

- (a) take no action or
- (b) seek informal resolution or
- (c) refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in Annex 2 to these Arrangements.

## HEARING PANEL PROCEDURE

### 1. Rules of procedure

#### 1.1 The Hearing Panel shall be comprised as follows –

(a) Where the Subject Member is a Borough Councillor, the Panel shall be comprised of five Borough Members and one Parish/ Town Member drawn from the Joint Standards Committee, one of whom shall be elected as Chairman.

(b) Where the Subject Member is a Town or Parish Councillor, the Panel shall be comprised of three Borough Members and three Parish/ Town Members drawn from the Joint Standards Committee, one of whom shall be elected as Chairman.

(c) Where the Subject Member is acting in a capacity both as a Borough Councillor and as a Town/ Parish Councillor, the Panel shall be comprised of five Borough Members and one Parish/ Town Member drawn from the Joint Standards Committee, one of whom shall be elected as Chairman

Where practicable, members of the Hearing Panel shall be drawn from a different planning area of the Borough than the member against whom the complaint has been made.

#### 1.2 The quorum for a meeting of the Hearing Panel is three.

1.3 The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may submit their views on the complaint to the Hearing Panel in writing instead.

1.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearing Panel. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Hearing Panel where it is likely that confidential or exempt information will be disclosed.

1.5 All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.

1.6 Where the Subject Member fails to attend the Hearing Panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Hearing Panel may resolve in

exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.<sup>1</sup>

## **2. Right to be accompanied by a representative**

The Subject Member may choose to be accompanied and/or represented at the Hearing Panel by a fellow councillor, friend or colleague.

## **3. The conduct of the hearing**

3.1 Subject to paragraph 3.2 below, the order of business will be as follows:

- (a) elect a Chairman;
- (b) apologies for absence;
- (c) declarations of interests;
- (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.11 above);
- (e) introduction by the Chairman, of members of the Hearing Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;
- (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
- (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

3.2 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

3.3 The Hearing Panel may adjourn the hearing at any time.

### **3.4 Presentation of the complaint**

- (a) The Investigating Officer presents their report including any documentary evidence or other material and calls his/her witnesses. No new points will be permitted;
- (b) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;
- (c) The Hearing Panel may question the Investigating Officer upon the content of his/her report and any witnesses called by the Investigating Officer.

### **3.5 Presentation of the Subject Member's case**

- (a) The Subject Member or their representative presents their case and calls their witnesses;
- (b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
- (c) The Hearing Panel may question the Subject Member and any witnesses called by the Subject Member.

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<sup>1</sup> Janik v Standards Board for England & Adjudication Panel for England (2007)

### 3.6 **Summing up**

- (a) The Investigating Officer sums up the complaint;
- (b) The Subject Member or their representative sums up their case.

### 3.7 **Views/Submissions of the Independent Person**

The Chairman will invite the Independent Person to express their view on whether they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct or no breach as the case may be.

### 3.8 **Deliberations of the Hearing Panel**

#### **Deliberation in private**

- (a) The Hearing Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) The Hearing Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and from whom.

#### **Announcing decision on facts found**

- 3.9 (a) The Hearing Panel will reconvene the hearing in public and the Chairman will announce that on the facts found, the Panel considers that there has been a breach of the Code of Conduct, or no breach, as the case may be.
- (b) Where the Hearing Panel finds that there has been a breach of the Code of Conduct, the Chairman will invite the Independent Person, the Subject Member\* and the Monitoring Officer to make their representations as to whether any sanctions (in accordance with paragraph 4 of this Annex 4) should be applied and what form they should take.

\*The Subject Member will be invited to make representations on the form of any sanctions, but not as to whether any sanctions should be applied.

- (c) Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will adjourn and deliberate in private.
- (d) If evidence presented to the Hearing Panel highlights other potential breaches of the Borough or Parish Council's Code of Conduct, then the Chairman will outline the Hearing Panel's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

#### **Formal Announcement of Decision**

- 3.10 (a) Where the complaint has a number of aspects, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Hearing Panel will make its decision on the balance of probability, based on the evidence before it during the hearing.
- (c) Having taken into account the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the Chairman will announce:
- (i) the Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
  - (ii) the sanctions (if any) to be applied;
  - (iii) the recommendations (if any) to be made to the Borough or Parish Council or Monitoring Officer;
  - (iv) that there is no right of appeal against the Panel's decision and/or recommendations.

#### **4. Range of possible sanctions**

- 4.1 Subject to paragraph 4.4 below, where the Hearing Panel determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/ recommended:
- (a) Recommending to the Borough/ Parish Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
  - (b) Recommending to the Subject Member's Group Leader or Parish Council, or in the case of a ungrouped Subject Member, to the Borough/ Parish Council that they be removed from committees or sub-committees of the Council;
  - (c) Recommending to the Leader of the Borough Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
  - (d) Instructing the Monitoring Officer [or recommendation to the Parish Council] to arrange training for the Subject Member;
  - (e) Recommending to the Borough/ Parish Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Borough/ Parish Council;
  - (f) Recommending to the Borough/ Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
  - (g) Recommending to the Borough/ Parish Council the exclusion of the Subject Member from the Borough/ Parish Council's offices or other premises, with the exception of meeting rooms as necessary for attending Borough/ Parish Council committee and sub-committee meetings;
  - (h) Reporting the Panel's findings to the Borough/ Parish Council for information;
  - (i) Instructing the Monitoring Officer to apply the informal resolution process;
  - (j) Sending a formal letter to the Subject Member;
  - (k) Recommending to the Borough/ Parish Council to issue a press release or other form of publicity;
  - (l) Publishing its findings in respect of the Subject Member's conduct in such manner as the Panel considers appropriate.

- 4.2 The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- 4.3 The Hearing Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.
- 4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the Hearing Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Hearing Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:
- (a) What was the Subject Member's intention and did they know that they were failing to follow the Borough/ Parish Council's Code of Conduct?
  - (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
  - (c) Has there been a breach of trust?
  - (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
  - (e) What was the result/impact of failing to follow the Borough/ Parish Council's Code of Conduct?
  - (f) How serious was the incident?
  - (g) Does the Subject Member accept that they were at fault?
  - (h) Did the Subject Member apologise to the relevant persons?
  - (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
  - (j) Has the Subject Member previously breached of the Borough or Parish Council's Code of Conduct?
  - (k) Is there likely to be a repetition of the incident?

## **5. Publication and notification of the [Hearing Panel's] decision and recommendations**

- 5.1 Within 10 working days of the Hearing Panel's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Hearing Panel's decision and recommendations and reasons for the decision and recommendations on the Borough Council's website.
- 5.2 Within 10 working days of the announcement of the Hearing Panel's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, in the format of the Decision Notice template below to:
- (a) the Subject Member;
  - (b) the Complainant;
  - (c) the Clerk to the Parish Council;
  - (d) Kent County Council's Standards Committee (*applicable only where the subject Member is serving at both Borough and County level*);
- 5.3 The Monitoring Officer will report the Hearing Panel's decision and recommendations to the next ordinary meeting of the Joint Standards Committee for information.

## TEMPLATE - DECISION NOTICE (of Hearing Panel)

### Complaint No: xxxx

On [insert date], the Hearing Panel of the Tonbridge and Malling Borough Council considered a report of an investigation into the alleged conduct of Councillor [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

### Complaint summary

[Summarise complaint in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel]

### Consultation with Independent Person

[Summarise the Independent Person's views in numbered paragraphs]

### Findings

After considering the submissions of the parties to the hearing and the views of the Independent Person, the Hearing Panel reached the following decision(s):

[Summarise the finding of facts and the Hearing Panel's decision against each finding of fact in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel, but substitute the Investigating Officer for the Hearing Panel. Please note that the Hearing Panel's findings may differ from that of the Investigating Officer]

The Hearing Panel also made the following recommendation(s)

[Detail recommendations]

### Sanctions applied

The breach of the [insert authority name] Code of Conduct warrants a [detail sanctions applied].

### Appeal

There is no right of appeal against the Hearing Panel's decision.

### Notification of decision

This decision notice is sent to the:

- Councillor [name of councillor]
- Complainant
- [Clerk to the xxxx Parish/Town Council];
- Kent County Council's Monitoring Officer *[applicable only where the Councillor is serving at both [Borough] [City] [District] and County level]*

### Additional help



If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on [insert telephone number] or email [insert email address]. We welcome calls via [Typetalk](#)

**Signed:**

**Date**

**Print name:**

Chairman of the Hearing Panel

Tonbridge and Malling Borough Council

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## TONBRIDGE & MALLING BOROUGH COUNCIL

### COUNCIL

16 February 2016

#### Report of the Director of Central Services

#### Part 1- Public

#### Matters For Decision

#### 1 APPOINTMENTS TO OUTSIDE BODIES

To consider the reappointment of Mrs Betty Keywood to Sir Thomas Smythe's Charity for a further term.

#### 1.1 Introduction

1.1.1 The period of office of Mrs Betty Keywood as Trustee for the parish of St Stephen, Tonbridge is due to expire shortly and she has expressed a willingness to be reappointed for a further four year term. The Charity has accordingly invited the Council to consider her reappointment.

#### 1.2 Legal Implications

1.2.1 None.

#### 1.3 Financial and Value for Money Considerations

1.3.1 Not applicable.

#### 1.4 Risk Assessment

1.4.1 Not applicable.

#### 1.5 Equality Impact Assessment

1.6 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

#### 1.7 Recommendations

1.7.1 RECOMMENDED that the Council consider the reappointment of Mrs Betty Keywood as a Trustee of Sir Thomas Smythe's Charity for the parish of St Stephen for a further four year term of office.

Background papers:

contact: Claire Fox

Nil

Adrian Stanfield  
Director of Central Services

## Sealing of Documents

To authorise the Common Seal of the Council to be affixed to any Contract, Minute, Notice or other document requiring the same.

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