

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

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NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.

Contact: Committee Services
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7 June 2016

To: MEMBERS OF THE JOINT STANDARDS COMMITTEE
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Joint Standards Committee to be held in the Civic Suite, Gibson Building, Kings Hill on Wednesday, 15th June, 2016 commencing at 7.30 pm

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

PART 1 - PUBLIC

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To confirm as a correct record the Minutes of the meeting of the Joint Standards Committee held on 1 July 2015

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Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

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MEMBERSHIP

Cllr Miss J L Sergison (Chairman)
Cllr D J Cure (Vice-Chairman) and Cllr D A S Davis (Vice-Chairman)

Borough Councillors

Cllr Ms J A Atkinson
Cllr Mrs P A Bates
Cllr Mrs S Bell
Cllr R P Betts
Cllr Mrs B A Brown
Cllr Mrs T Dean
Cllr T Edmondston-Low
Cllr D Lettington
Cllr P J Montague
Cllr C P Smith

Independent Persons

Mr D S Ashton
Mr J M Gledhill

Town/Parish Representatives

Ms D Alford-Smith (Snodland)
Mr D J Beach (Wrotham)
Mr J A Beadle (Ditton)
Mr M Carboni (Plaxtol)
Mr P Crawford (East Peckham)
Mrs P Darby (Platt)
Mrs T Dawson (Borough Green)
Mr D Elvy (Aylesford)
Ms P Garrett (Addington)
Mr D Gaunt (Trottscliffe)
Prof M McKinlay (Ryarsh)
Ms J Newman (Hadlow)
Mr A Petty (Kings Hill)
Mr J P S Regan (Mereworth)
Mr R Selkirk (West Malling)
Mr W E Stead (Burham)
Mr D Thornewell (East Malling and Larkfield)
Mr R Ulph (Leybourne)

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Apologies for absence

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Declarations of interest

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TONBRIDGE AND MALLING BOROUGH COUNCIL

JOINT STANDARDS COMMITTEE

Wednesday, 1st July, 2015

Present: Cllr Miss J L Sergison (Chairman), Cllr D J Cure (Vice-Chairman), Cllr D A S Davis (Vice-Chairman), Cllr Ms J A Atkinson, Cllr Mrs P A Bates, Cllr R P Betts, Cllr Mrs B A Brown, Cllr T Edmondston-Low, Cllr D Lettington, Cllr P J Montague, Cllr C P Smith, Ms D Alford-Smith (Snodland), Mrs L Bright (Hadlow), Mr P Crawford (East Peckham), Mrs P Darby (Platt), Mrs T Dawson (Borough Green), Mr D Elvy (Aylesford), Prof M McKinlay (Ryarsh), Mr R Selkirk (West Malling) and Mr D Waller (Kings Hill)

Councillors Mrs J A Anderson, O C Baldock, M A Coffin, B J Luker, S C Perry and M Taylor were also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillor Mrs S Bell, Mr D S Ashton (Independent Person), Mr J A Beadle (Ditton), Mr D Thornewell (East Malling and Larkfield) and Mr R Ulph (Leybourne)

PART 1 - PUBLIC

ST 15/7 DECLARATIONS OF INTEREST

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

ST 15/8 MINUTES

RESOLVED: That the Minutes of the meeting of the Joint Standards Committee held on 19 January 2015 be approved as a correct record and signed by the Chairman.

MATTERS SUBMITTED FOR INFORMATION

ST 15/9 INTRODUCTION TO THE WORK OF THE COMMITTEE

The Committee received a presentation from the Director of Central Services and Monitoring Officer, introducing the work of the Joint Standards Committee for the particular benefit of new Borough Members and Parish/Town Council representatives. An outline was given of the standards regime, the requirement to adopt a Code of Conduct and the rules governing Disclosable Pecuniary Interests. Details were discussed of arrangements for the investigation of allegations in Tonbridge and Malling, the role of the Joint Standards Committee and operation of the Hearings Panel.

The Director of Central Services answered a number of questions raised at the meeting.

MATTERS FOR CONSIDERATION IN PRIVATE

ST 15/10 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

MATTERS SUBMITTED FOR INFORMATION

ST 15/11 UPDATE - CODE OF CONDUCT COMPLAINTS

(LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The report of the Monitoring Officer provided an update on complaints received since September 2014.

RESOLVED: That the report be received and noted.

The meeting ended at 8.20 pm

TONBRIDGE & MALLING BOROUGH COUNCIL

JOINT STANDARDS COMMITTEE

15 June 2016

Report of the Monitoring Officer

Part 1- Public

Matters for Information

1 UPDATE – CODE OF CONDUCT COMPLAINTS

1.1 Introduction

1.1.1 This report updates Members on the complaints made to me as Monitoring Officer that a Member may have failed to comply with his/ her authority's Code of Conduct.

1.1.2 In accordance with the arrangements adopted by the Borough Council for dealing with complaints that a councillor has breached their authority's code of conduct, complaints are subject to an initial assessment by me in consultation with the Independent Persons and the Chairman and Vice-Chairmen of the Joint Standards Committee. In advance of that assessment I invite the Councillor against whom the complaint is made to submit their initial views to me so that these may be taken into account in our deliberations.

1.1.3 Our adopted procedure requires that complaints are assessed against the following preliminary criteria –

The legal jurisdiction test - this contains 6 elements, including

- was the person complained of acting in an official capacity at the time of the alleged conduct?

- 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? ;

If a complaint fails one or more of the jurisdiction tests, no further action will be taken and the complaint will be rejected;

The local assessment criteria test - if a complaint passes the legal jurisdiction test, I am then required to apply the local assessment criteria test. There are 12 elements to this test, including

-The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;

-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

If one or more of the local assessment criteria applies to the complaint, no further action will be taken by me and the complaint will be rejected.

A full copy of the adopted arrangements is included at **Annex 1**.

- 1.1.4 If a complaint passes the above tests, the next stage is then to consider whether the complaint merits investigation, or if it is more appropriate for it to be resolved on an informal basis. In certain cases it may also be appropriate to take no action, notwithstanding the fact that a complaint has passed the initial tests.
- 1.1.5 As agreed by this Committee on 19 January 2015, personal details of Complainants or Subject Members are not published unless a complaint leads to investigation and public hearing before the Hearing Panel.

1.2 Complaint 16/2014 – Tonbridge & Malling Borough Council/ Borough Green Parish Council

- 1.2.1 On 9 September 2014, I received a complaint about the conduct of a Member of Tonbridge and Malling Borough Council ("TMBC") and Borough Green Parish Council ("BGPC").
- 1.2.2 The allegation arose from a letter placed on the Complainant's car whilst parked in a public road in Borough Green relating to parking and the ensuing e-mail exchange concerning the letter between the Complainant and the Subject Member. The letter accused the recipient of parking selfishly by blocking a resident's access and requesting the recipient to park responsibly. The correspondence confirmed that whilst the letter was not placed on the Complainant's car personally by the Subject Member that he gave authority for residents "whose lives are made miserable by people parking inconsiderately" to use it. The letter was written on notepaper headed with the Borough Council's crest and was signed by the Subject Member in his capacity as both a Parish Councillor and Borough Councillor.
- 1.2.3 The complaint passed both the legal jurisdictional test and the local assessment criteria. It was agreed that it should proceed to investigation in respect of 2 potential breaches of the Tonbridge and Malling BC Code -

"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;

(2) You must not..

(f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;

- 1.2.4 The investigation into this complaint was carried out by external investigators, namely Wilkin Chapman Solicitors LLP. Their report concluded that there had been no breach of the Code of Conduct.
- 1.2.5 The report noted that in applying the Code to the circumstances of an alleged breach of disrepute, it is established that it is not necessary for the member's actions to have actually diminished public confidence, or harmed the reputation of the authority. The test is whether or not the conduct could 'reasonably be regarded' as having these effects. However, the conduct must be sufficient to damage the reputation of the member's office or the Council, not just the reputation of the Councillor as an individual. In the circumstances of this case the report concluded that the conduct did not cross the line into the area of being such that it affected the ability of the Councillor to fulfil his role or damage the reputation of the Council. The report further concluded that, in the circumstances of this case, an objective test of the Councillor's actions resulted in a usage not amounting to an improper use of resources.
- 1.2.6 The report of Wilkin Chapman was considered by the Deputy Monitoring Officer, in consultation with the Chairman and Vice-Chairmen of the Joint Standards Committee, and the Independent Persons. Having considered the report in detail, and the conclusion that the Subject Member did not breach the Code of Conduct, it was agreed that, save for an information report to the Joint Standards Committee in due course, no further action would be taken in respect of this complaint.

1.3 Complaint 15/2014 – Tonbridge & Malling Borough Council

- 1.3.1 On 12 October 2015 the Standards Hearing Panel met to determine an allegation that Councillor Mike Taylor had breached the Code of Conduct of Tonbridge and Malling Borough Council.
- 1.3.2 The allegation giving rise to the investigation and hearing in this case had been self-referred by Councillor Taylor. On 8 July 2014 Councillor Taylor had referred himself to the Monitoring Officer as it appeared to him that others considered his conduct to be in breach of the Council's Code of Conduct. This referral had taken place after a meeting with the Chief Executive and the Monitoring Officer, in which concern was expressed by them about comments made by Councillor Taylor over aspects of development at Isles Quarry West, how requests for information by him

had been dealt with and the conduct of Officers. A number of these comments had been posted on an internet website.

- 1.2.3 An independent external investigator (Wilkin Chapman Solicitors) was appointed to carry out the investigation into the allegation. Their report concluded there had been a breach of the Code of Conduct on the grounds of (i) bullying and (ii) bringing his office or the Council into disrepute
- 1.2.3 The Panel found that there had been a breach of the Code of Conduct 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”*. The Hearing Panel did not find that Councillor Taylor had breached paragraph 3(2)(a) *“You must not...(a) bully any person”*.
- 1.2.5 At the Hearing the Panel imposed 4 sanctions –
- a) Recommending to Council that Councillor Taylor be issued with a formal censure by motion (i.e. the issue of an unfavourable opinion or judgement or reprimand);
 - b) Recommending to Council that Councillor Taylor be removed from Area 2 Planning Committee until the end of April 2017;
 - c) Recommending to Council that they issue a press release; and
 - d) Publishing the Panel’s findings in respect of Councillor Taylor’s conduct on the Council’s website
- 1.2.5 Sanctions (a) to (c) above were ratified by full Council on 3 November 2015. Sanction (d) did not require further approval by full Council.
- 1.2.6 The full reasons for the decision of the Hearing Panel are set out in the attached Decision Notice (**Annex 2**).
- 1.3 Complaint 22/2015 – Tonbridge & Malling Borough Council/ Borough Green Parish Council**
- 1.3.1 On 4 January 2016 the Standards Hearing Panel 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.
- 1.3.2 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.
- 1.3.3 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.”

- 1.3.4 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.”*
- 1.3.5 An independent external investigator (Richard Lingard) was appointed to carry out the investigation into the allegation, and his 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.’*
- 1.3.6 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**.
- 1.3.7 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

- 1.3.8 Recommendation (b) above was ratified by full Council on 16 February 2016. Recommendation (a) did not require further approval by full Council.

1.4 Complaint 28/2015 – Mereworth Parish Council

- 1.4.1 On 8 December 2015 I received a complaint from a local resident about a Member of Mereworth Parish Council.
- 1.4.2 The principal allegation in the complaint was that the Councillor in question failed to leave the room (or at least the minutes were silent as to whether he left the room) during the consideration of an item relating to proposed redevelopment of land in the Parish, having declared an interest in that matter. It is further alleged that the Councillor did not specify what the nature of his interest was in the item.
- 1.4.3 The complaint made further allegations about the conduct of the meeting in question, and subsequent conduct by the Parish Council.
- 1.4.4 The initial assessment of the complaint was completed on 23 March 2016.
- 1.4.5 I considered that the conduct alleged by the complainant was capable of amounting to a breach of paragraph 5 of the Mereworth Code of Conduct, in that if proven, the conduct could amount to a failure to meet specified requirements relating to Disclosable Pecuniary Interests/ Other Significant Interests. The requirements of the legal jurisdiction test were therefore met.
- 1.4.6 However, I considered that the complaint failed the local assessment criteria, for the following reasons –
- (a) the alleged misconduct happened some 5 and a half months prior to submission of the complaint. Paragraph (f) of the local assessment criteria requires that allegations of misconduct must be less than 3 months old, unless exceptional circumstances exist. In the case of this particular complaint, I did not consider that exceptional circumstances existed to depart from the requirement that complaints should be made within 3 months from the date of the alleged conduct;
 - (b) The documentation supplied to me by the Clerk to the Parish Council confirmed that the Subject Member had declared an interest in the item in question. According to the Clerk, he then left the room and took no part in the discussion. There was therefore insufficient evidence to substantiate the complaint, contrary to paragraph (c) of the local assessment criteria;
 - (c) The letter of complaint also took issue with the conduct of the Parish Council in submitting their objection to the planning application, and in particular the reference to the history of vandalism at the property. There was no evidence to

suggest that this statement (whether correct or not) was made by the Councillor in question. Indeed, it appears to have been a position taken by the Parish Council as a whole rather than any individual member

1.4.7 The decision I reached was that no further action should be taken in respect of this complaint.

1.5 Legal Implications

1.5.1 The Borough Council is required under s28(6) of the Localism Act to have in place arrangements under which allegations can be investigated and decisions on allegations can be made.

1.6 Financial and Value for Money Implications

1.6.1 The costs of appointing external investigators in respect of the complaints detailed in this report totalled £13,156.25.

contact: Adrian Stanfield

Adrian Stanfield
Director of Central Services & Monitoring Officer

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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.

ANNEX 1

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.¹

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.

¹ 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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**DECISION NOTICE
of Hearing Panel on 12 October 2015**

Complaint dated 8 July 2014 relating to conduct of Councillor Francis Michael Taylor

- 1 On 12 October 2015, the Hearing Panel of the Joint Standards Committee of Tonbridge and Malling Borough Council ("TMBC") and all of the Parish Councils within the administrative area of TMBC considered a report of an investigation into the alleged conduct of Councillor Francis Michael Taylor ("Councillor Taylor"), a Member of Tonbridge and Malling Borough Council. A general summary of the complaint is set out below.

Complaint summary

- 2 Background: In January 2014 Councillor Taylor was elected to Tonbridge and Malling Borough Council (the Council) to represent the Borough Green and Long Mill Ward. This ward included the Isles Quarry Site, which Councillor Taylor had taken an interest in for a number of years. Councillor Taylor had consistently opposed the removal of the Isles Quarry Site from the Green Belt and its identification as a strategic development site. The Site was granted planning permission for residential development in June 2013.
- 3 During May and June 2014 Councillor Taylor sent numerous emails to Officers of the Council about aspects of the development at Isles Quarry West. Some of those emails contained comments which caused concern to the Officers. Councillor Taylor also posted information on a public website that repeated the comments which had caused concern.
- 4 Council Taylor's conduct in this matter caused concern for the Officers of the Council, including the Council's Monitoring Officer. Councillor Taylor was invited to a meeting with the Monitoring Officer and Chief Executive to discuss Councillor Taylor's conduct because of these concerns. That meeting took place on 27 June 2014. A comprehensive note of the meeting taken by Adrian Stanfield ("AS"), the Council's Monitoring Officer, is attached to the report of the Investigating Officer ("IO") and marked JTG2.
- 5 Following that meeting Councillor Taylor decided to refer himself to the Monitoring Officer by e-mail as it appeared to him that others considered his conduct to be in breach of the TMBC's Code of Conduct (see wording of e-mail at 6 below).
- 6 In an email dated 8 July 2014, sent to an extensive number of individuals and copied to the Council's Monitoring Officer, Chief Executive and others Councillor Taylor stated:

"At a recent meeting with Julie Beilby and Adrian Stanfield it was alleged that I had committed serious breaches of the Standards Code regarding "lack of respect and inappropriate comments and language to Council Officers", specifically Steve Humphrey and Lindsay Pearson.

Whilst I clearly take a different view, after some thought I realised that the code is more important than individual beliefs, and that justice must be seen to be done.

As a responsible member of this Authority, I am therefore formally reporting myself to the Monitoring Officer for the alleged breaches of the Standards Code."

- 7 The TMBC Code of Conduct does not contain an explicit requirement to treat others with respect. The Investigating Officer (IO) considered whether or not Councillor Mike Taylor may have failed to follow elements of TMBC's Code relating to bullying and disrepute which are set out below:

"General Obligations:
3(2) You must not

(a) bully any person...

..(f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute..."

Consultation with Independent Person

- 8 The Independent Person ("IP") raised the following matters:
- 8.1 The IP reminded the Panel that his views must be sought and taken into account under section 27(a) of the Localism Act 2011.
- 8.2 The allegation had been set out at paragraph 4.17 of the IO's report but the Investigating Officer had investigated a breach of paragraphs 3(2)a which referred to not bullying any person and 3(2) (f) which referred to behaviour which could reasonably be regarded as bringing the Councillor's office or the Authority into disrepute.
- 8.2.1 The IP referred to the meeting of 27 June 2014 and the notes made of that meeting by Councillor Taylor and found that no reference to bullying or disrepute had been made and that the only references made by the officers at that meeting were concerned with disrespect.
- 8.2.2 The IP believed that the substance of Councillor Taylor's self-referral was disrespect which was not an enforceable part of the TMBC Code of Conduct, it being solely inferred from the Nolan Principles. He indicated that disrespect needed to be an express obligation within the Code before a member could be found to be in breach of it.
- 8.3 The IP referred to emails being very important as they are contemporaneous with events and therefore carry more weight. He accepted that there was a previous history concerning planning matters and the issue of contamination between Councillor Taylor and the Council which had caused some conflict

and recognised that the fact that the site had been a landfill site would have been a very important matter. He indicated that Councillor Taylor believed that the Council was withholding information intentionally, but in his view, this was based on a misunderstanding by Councillor Taylor, in that Councillor Taylor believed that the obstruction survey which was supposed to be an attachment to an e mail was actually a survey plan and not a full blown report at all. He drew the Panel's attention to email 9 which confirmed that the obstruction survey which had been sent to Councillor Taylor was actually a plan and this had been relayed to Councillor Taylor by AS in that email: "003 Obstruction Survey [which] is quite different to the Ground Obstruction Report and is simply, as the name suggests, a survey plan." The IP referred to this misunderstanding by Councillor Taylor and him genuinely believing that he had been misled rather than actually having been misled by the Council.

8.4 In relation to the allegation of disrepute, the IP recognized that Councillor Taylor was raising matters with the best of intentions for the benefit of his community. He also referred to the difference between making rude comments to your equals and making rude comments to those officers not so senior within an organisation and referred to those higher up within an organisation being more able to hold their own.

8.5 In making an allegation of deception by officers to members of the public, the IP indicated that Councillor Taylor risked libelling officers.

8.6 The IP considered that the Panel should look at all of the emails as a whole and consider whether Councillor Taylor had raised matters in a proper manner, whether he got proper answers, and consider what effect (if any) his conduct had on members of the public. He indicated that if there was no reaction from the public, they had probably ignored the language used by Councillor Taylor. He referred to officers not knowing what reaction there had been to the emails and posts as they did not appear to have provoked any telephone calls or emails to the Council and there had not been any other complaints about the matter from the public. He suggested that if the emails had been ignored by the public they did not bring the Council into disrepute.

8.7 In relation to the bullying allegation the IP made the following representations:

8.7.1 The test for bullying was set out at paragraph 7.27 of the IO's report

"Bullying may be characterized as offensive, intimidating, malicious insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

This can be contrasted with legitimate challenges which a member can make in challenging policy or scrutinizing performance".

The IP asserted that there were 3 elements in this test:

- (a) There being a weaker person (such as a secretary who may have overheard what was being said rather than actually being the subject of the behaviour);
- (b) Actual influence over the person being bullied; or
- (c) Perceived influence over that person.

The IP did not believe that Councillor Taylor had any power over the officers involved in this matter and concluded that there was no bullying. His reasons were:

- 8.7.2 In the meeting on the 27 June 2014 no reference was made to bullying by the officers present and in addition in the written statements made by the officers involved the language used by them did not suggest bullying.

The IP referred to the Statement of Steve Humphrey where he said "Sadly this did not seem to move matters forward demonstrated by the content of an email from Councillor Taylor later that day," he indicated that this did not sound like a person being bullied. (p 105)

He also referred to the statement of Lindsay Pearson at paragraphs 15, 16 and 17 (page 111) and further at paragraph 21 Lindsay Pearson described Councillor Taylor's behaviour as "rather sad and disappointing rather than more offensive." and the IP concluded that Lindsay Pearson did not appear to feel bullied. (p112)

- 8.7.3 The IP believed that the allegation against Councillor Taylor was a serious one but he did not feel that Councillor Taylor's conduct had, in the words used by the IO, "crossed the line" and he suggested that the Panel should not make any finding against Councillor Taylor unless they were fully satisfied that Councillor Taylor's behaviour had "crossed the line."

Findings

In the following paragraphs, any references to a page number or paragraph are a reference to pages or paragraphs within the Report of the Monitoring Officer dated 12 October 2015 unless otherwise stated.

After considering the reports of the Monitoring Officer and of the Investigating Officer and the submissions of the parties to the Hearing and the testimony of the witnesses (Julie Beilby, Adrian Stanfield and Steve Humphreys), and the views of the Independent Person, the Hearing Panel made the jurisdictional decision recorded in paragraph 48 of this notice below. The factual matters set out in the IO's report were not disputed and so the Panel broadly took those facts as read. They made the following findings:

Facts

- 9 Councillor Taylor was elected as ward member for Borough Green and Long Mill Ward in January 2014. This ward included within it the site known as Isles Quarry West ("IQW") (p47– paragraphs 5.1/5.3).

- 10 The Borough Council has adopted a Code of Conduct that includes provisions for its members to have due regard to the Nolan Principles, although these do not form part of the Code. Under the heading of "Leadership", these principles state that a Member should show leadership by promoting and supporting high standards of conduct and behaving in accordance with the Nolan principles when championing the interests of the Community. The Code requires Members to not bully any individual and not act in a manner that might bring the members' office or the Authority into disrepute (p47 – paragraph 5.2).
- 11 Councillor Taylor opposed the designation for Isles Quarry West as a strategic development site in the Core Strategy and Development Land Allocation under the LDF process (p108).
- 12 In June 2013 planning permission was granted for the residential development of IQW (p35 –paragraph 4.76).
- 13 Councillor Taylor has a long standing association with IQW having worked as a haulage contractor operating out of the quarry and also by virtue of his residence in the area. Councillor Taylor has taken a close interest in the site since the commencement of consideration of the area as a potential development site (p47 – paragraph 5.4)
- 14 For some time Councillor Taylor has been of the opinion that the designation of the site for development was not properly considered. He has made a number of complaints about the process and other matters relating to the development of the site (p47, paragraph 5.5) but no finding of wrong doing by the Council has been made during any of the investigations resulting from these complaints. (p.78 paragraph 4 of statement of Julie Beilby)
- 15 After Councillor Taylor's election to the Borough Council in January 2014 he took up his concerns over the development at IQW in his capacity as the Ward Member for the area. This involved numerous emails between him and various officers of the Council (p47 paragraph 5.7) which were sent by Councillor Taylor to those persons stated in the email address line and others (see 19 below). These emails are referenced in the schedule of emails at JTG10 (p.142) which are marked for reference purposes as emails 1, 2, 3, 4, 5, 6, 7, 11, 12 and 13 respectively. The content of these emails was not in dispute at the Hearing and Councillor Taylor confirmed that he had sent them.
- 16 Councillor Taylor also sent what he referred to as "Freedom of Information" ("FOI") requests to the Council in respect of documents relating to the planning permission for the IQW site. (p123 answer by Councillor Taylor). These were dealt with by the Council under the Environmental Information Regulations 2005 ("EIR") (p162 second paragraph). [For ease of reference the request for information made by Councillor Taylor on 6 March 2014 will be referred to in this decision notice as an FOI request notwithstanding the finding that it fell to be considered by officers under EIR.]

- 17 Councillor Taylor was dissatisfied with the information he received in response to his FOI request (p49 paragraph 6.1(b) additional submissions of Councillor Taylor numbered 4.28 4.29 and p50 additional submission numbered 4.96). Councillor Taylor threatened to make a complaint to the Information Commissioner about his dissatisfaction (p74 Note of Meeting of 27 June 2015 first paragraph), however no such complaint was made.
- 18 During May and June 2014 a number of the emails sent by Councillor Taylor to officers and members, which had also been copied to external bodies and to individuals, caused concern to senior officers at the Council due to their tone, content and manner of distribution. These included emails marked 2, 3, 4, 5, 6, 7, and 13 at JTG10 (page 142).
- 19 The table below sets out the distribution list of emails 2 to 7:

Email	Date	To
Email 2	20/05/14	Lindsay Pearson, Steve Humphrey and copied to Borough Green Parish Council ("BGPC") members
Email 3	30/05/14	Nicolas Heslop, Julie Beilby, and copied to Jennifer Wilson of the Environment Agency
Email 4	12/06/14	Lindsay Person, Steve Humphrey and copied to Russell Dawkins at Crest Tony Sayer of BGPC and all members of that Parish Council Jennifer Wilson of the Environment Agency
Email 5	13/06/14	Adrian Stanfield, Hazel Damiral and copied to all members of BGPC
Email 6	14/06/14	All members of TMBC and copied to Adrian Stanfield
Email 7	18/06/14	Adrian Stanfield, Nicolas Heslop and copied to Tim Shaw and members of the Parish Council

20. The emails included references to Council Officers:
- Being in the developers' pocket (19 May 2015 email from Councillor Taylor to Council Officers)
 - Lying and misleading Members (email 5) (email 6) (email 11)
 - Wasting public funds (email 7)
 - Not carrying out their duties properly (email 5) (email 7) and
 - Breaking the law (email 3) (email 4) (email 7)
- 21 Councillor Taylor ran a local news website under the name of "Borough Green News" ("BGN") which was hosted in America to which only he could post material. There was also a guest book for others to leave comments (p127).

- 22 Some of the allegations mentioned at 20 above were also posted on this website including officers:
- Being in the developers' pocket
 - Wasting public funds
 - Lying and withholding information
- (p172)
- 23 On 30 June 2014 Councillor Taylor posted a paragraph assessing Mr Stanfield's competence as a Solicitor on this open website and accusing him of using "devious little tricks" and stated that "in the future I [*Councillor Taylor*] will not meet with him [*Adrian Stanfield*] without a witness present I am too trusting by far" (p34).
- 24 Mr Stanfield was offended by these posts and considered them to be a direct personal attack which impugned his integrity as a Solicitor of the Senior Courts (p34).
- 25 Some of the emails directed to officers contained inappropriate language. An email dated 13 June was sent by Councillor Taylor to all members of TMBC in response to an email which Mr Stanfield had written to Councillor Taylor and his fellow ward colleagues and others to set out a summary of Counsel's advice which had been sought in view of the comments made by Councillor Taylor about the duties of the Council regarding remediation measures at the Isles Quarry West site.(p151 email 5)
- The inappropriate language used by Councillor Taylor in this email was "My first response to your email began with a b and ended cks".
- 26 Councillor Taylor stated in his interview with the IO that this comment was aimed at Adrian Stanfield.
- 27 Councillor Taylor recognised in interview that some of his emails questioned the integrity of senior officers and therefore the reputation of the Council (p43 paragraph 4.130), (p44 paragraph 4.141) (p45 paragraph 4.143) (p43 paragraph 4.135).
- 28 Councillor Taylor was invited to a meeting with senior officers of the Council, the purpose of which was to discuss his behaviour (27 June 2014).
- 29 The Council obtained an opinion from Counsel as a result of the concerns raised by Councillor Taylor regarding contamination remediation at Isles Quarry West which was circulated to Members of the Parish Council and TMBC.
- 30 Councillor Taylor accused AS of "biasing" the instructions to Counsel and misleading all members of the Council and of wasting public funds (p32 paragraphs 4.57 and 4.58) (emails and post on BGN web-site (p172 JTG12)).

- 31 AS found this email unacceptable as it inferred he was intending to mislead all members of the Council (paragraph 4.57).
- 32 Councillor Taylor accused AS of directly condoning an alleged illegal act (p33 paragraph 4.59) for withholding information requested under a Freedom of Information Act request by email on 18 June 2014 (email 7).
- 33 AS sent Councillor Taylor an email on 18 June (email 9) expressing strong concern about Councillor Taylor's emails of 12 June 2014 and 30 May 2014 and 20 May 2014 and 14 June 2014 (p161 email 9).
- 34 AS explained to Councillor Taylor the duties of a local authority in relation to information requested concerning environmental information under the Environmental Information Regulations 2005 ("EIR") in an email dated 18 June 2015 (p161 email 9):

"The Environmental Information Regulations 2005 (EIR) give rights to public access to environmental information held by public authorities. There are similarities between the two, but there are also important differences. Information requested relating to contamination would fall to be dealt with under EIR rather than FOI.

Under FOI, the information to be communicated to an applicant is the information held at the time of the request is received, except that account may be taken of any amendment or deletion made between that time and the time the information is communicated. The position with EIR is different, in that regulation 5(1) requires a public authority to make information that it holds available on request, and regulation 12(4)(a) provides an exception for information not held at the time the request is received. In either case, it is not possible to seek information that may or may not be held by a public authority at some unspecified point in the future".

- 35 AS confirmed in his email to Councillor Taylor that an obstruction report relating to IQW (which Councillor Taylor believed to have been withheld from him) was received by the Borough Council on 21 May 2014 in hard copy and 19 May 2014 by email which was 2 ½ months after the FOI request dated 6 March 2014 made by Councillor Taylor had been sent (email 9).
- 36 The actual obstruction report relating to IQW was sent to Councillor Taylor 16 days after it was received by the Borough Council (p 162 email 9, first paragraph).
- 37 AS warned Councillor Taylor about his conduct in an email dated 18 June 2014 in his position as Monitoring Officer at the Authority "It is unacceptable for any Councillor to make spurious and unfounded allegations against Officers. I cannot put it more simply than that" and he invited him to attend a meeting with the Chief Executive and Steve Humphrey to discuss the conduct issues (email 9).

- 38 At the meeting on 27 June 2014, in his capacity as Monitoring Officer, AS warned Councillor Taylor about his behaviour and advised him that there was a clear distinction between a grievance held by a member and the way that grievance was dealt with.

Findings

- 39 The Panel considered that Councillor Taylor was acting in his official capacity at the time of the conduct in question, and the TMBC Code of Conduct was therefore engaged.
- 39.1 In coming to this decision it had regard to paragraphs 7.1 to 7.3 of the IO's report and his conclusion at paragraph 7.4 that Councillor Taylor was acting in his official capacity. The Panel agreed with both the reasoning of the IO and the conclusion and found that Councillor Taylor was acting in his official capacity in sending the emails and making posts on BGN website, (identified at paragraph 15 above and JTG12 (p.172-173)).
- 40 The Panel found that Councillor Taylor breached paragraph 3(2)(f) of the TMBC Code of Conduct, namely:

"You must not conduct yourself in a manner which would reasonably be regarded as bringing your office or the Authority into disrepute."

- 40.1 The Panel found that it was right and proper that members should raise concerns about the implementation of development within their ward and also to challenge the actions of officers of the Council in a robust manner. There was nonetheless a clear distinction between matters being raised in the correct forum using appropriate terms and the tone and the manner in which those matters were pursued.

By way of example as to the correct forum for raising matters, in relation to the FOI request made by Councillor Taylor, it was evident that Councillor Taylor was dissatisfied with the Council's response. The Panel believed that he could have made a complaint to the Information Commission rather than making unsubstantiated allegations relating to withholding information and breaking the law. The Panel noted that the Independent Person in his representations to the Panel was of the view that Councillor Taylor's allegations relating to the FOI request and withholding information (and by inference to this also his statements concerning officers breaking the law) were based on a mistake. The Panel agreed that there was no foundation to these allegations. (Finding of fact numbered 34, 35, and 36 above).

- 40.2 In reaching the conclusion that the TMBC Code of Conduct was breached the Panel considered the test set out by the IO at paragraphs 7.5 to 7.7 of his report (p53-54) and whether the conduct of Councillor Taylor could reasonably be regarded as tarnishing the reputation of the Authority and thereby bringing the Authority into disrepute.

- 40.3 The Panel considered the test to be an objective one as to whether Councillor Taylor's conduct could cause the reputation of the Authority to suffer in the mind of a reasonable person, and therefore bring the Authority into disrepute.
- 40.4 The Panel considered that taken in isolation some of the emails by themselves may not have led to a breach of the Code, and in the words of the IO "crossed the line" into unacceptable behaviour, but taken in totality and due to the wide circulation of the emails to external bodies and people and their content, the offending parts of which are set out at paras 7.9, 7.11, 7.13, 7.15, 7.17, 7.19 and 7.20 of the IO's report (p 54-55) this amounted to a breach of paragraph 3(2)(f) of the TMBC Code of Conduct as it was behaviour which could reasonably be regarded as bringing the Authority into disrepute by tarnishing its reputation.
- 40.5 It was further noted by the Panel that Councillor Taylor had acknowledged that his comments could be considered as an attack on the integrity of officers and the Council and that this could affect the reputation of the Council (p56 paragraph 7.21 and answers given by Councillor Taylor in his interview with the IO at p121, 124 and 128).
- 40.6 The Panel also considered the representation made by the IP on this point that there was no evidence to suggest that the reputation of the Council had been tarnished as no complaints appeared to have been received about the Council's behaviour in this respect. The Panel found that the test to be applied was not whether in fact the reputation of the Council had been damaged, but whether the member had conducted himself in a manner which "could reasonably be regarded as bringing" [his] "office or the Authority into disrepute" and it found that he had done so.
- 40.7 With regard to the Posts on BGN (website) the Panel were particularly concerned that these were not limited to circulation to named persons but had unlimited worldwide circulation and therefore the ability to extend the remit of those who may believe that the allegations made were true therefore potentially adversely affecting the reputation of the Council.
- 40.8 The Panel had no hesitation in finding that the emails and posts referred to amounted to a breach of Paragraph 3(2)(f) of the TMBC adopted Code of Conduct.
- 40.9 In coming to its conclusion the Panel also had regard to paragraph 7.26 of the IO's report dealing with Article 10 of the European Convention on Human Rights ("ECHR") and the advice of the legal advisor to the Panel.

The Panel consider that on the facts it was entitled to find a breach of the Code and that this was an imposition on Councillor Taylor's right to freedom of expression. It noted that usually political expression was afforded a very high level of protection under the ECHR, but that where comments made involved the personal abuse of officers, as in this case (see paragraph 20, 22, 23, 27, 30, 32 of the findings of fact above), the imposition of a restriction on that right was a justified interference in order for the protection of the reputation or the

rights of others (namely the officers of the Council referred to in those emails and post on BGN website).

41 In relation to the allegation concerning paragraph 3(2)(a) of the Code

"You must not(a) bully any person"

The Panel found that the Code had not been breached. Whilst the Panel took into account the view of the IP and the fact that none of the officers in giving evidence felt that they had been bullied it found that had the officers felt bullied, a different decision may have been made.

- 41.1 The Panel disagreed with part of the representations of the IP in relation to bullying and found that it was possible for a single Member to bully an officer of the Council. The Panel agreed with the reasoning and conclusions of the IO at paragraph 7.31 of his report and that Councillor Taylor was in a position of "actual or perceived influence" over the officers of the Council. The panel accepted the test put forward by the IO in relation to this point at paragraph 7.28 (p57) of his report where he referred to the two factors to be considered in relation to bullying. The second of these being whether the behaviour in question:

"...was directed at a weaker person or a person over whom Councillor Taylor had an actual or perceived influence".

They found that this part of the test was satisfied but that the first part of the test was not as the Officers concerned had not felt bullied.

The overall test for bullying had not been satisfied on the facts and the Panel therefore found that there was no breach of the Code relating to bullying.

- 41.2 The Panel expressed the view that had the behaviour in question been directed at less senior officers they would be very likely to have come to a different conclusion. The Panel noted that the behaviour in question had the essence of "bullying" about it, but they had to also consider its effect on the persons to whom it was directed. In this case, because the officers concerned did not feel bullied the test for bullying had not been made out on the facts.

- 42 In considering the representation of the IP in paragraph 8.2, the Panel found that the term 'disrespect or disrespectful behaviour' could apply to behaviour which brought the Councillor's office or the Authority into disrepute and often behaviour may fall to be considered under more than one provision in the Code of Conduct. The Panel noted that the terms disrespect and disrepute were not necessarily mutually exclusive of each other.

- 42.1 The TMBC Code of Conduct did not have disrespect as an enforceable obligation, as it was within the Nolan Principles which cannot be enforced by way of a complaint. Nonetheless the Panel considered that Councillor Taylor's behaviour was disrespectful, and whilst this was not within the TMBC Code in itself, it was also behaviour which could reasonably be said to have

the effect of bringing the Councillor's office or the Authority into disrepute or could amount to bullying which are both breaches of the Code of Conduct.

- 42.2 The Panel considered the breaches of the Code set out in the IO's report at paragraph 4.18, relating to "bullying and disrepute" and agreed with the conclusion of the IO at paragraph 4.23 of his report for the reasons stated. Whilst the cases referred to were recognised by the Panel as being only guidance to the Panel, they were guidance which the IO and the Panel was properly entitled to take into account. The panel concurred with the view of the IO that "One set of facts can and often does involve more than one breach of the Code."

Sanctions applied

Before considering whether it was appropriate to impose any sanction, the Panel heard submissions from the Deputy Monitoring Officer and the Subject Member. The Independent Person was consulted, but did not wish to provide any representations with regard to sanctions but did make some comments which are summarised below at paragraph 45.

- 43 The representations of the Deputy Monitoring Officer were made available in writing after the Hearing and have been annexed to this decision notice for ease of reference.
- 44 Councillor Taylor thanked the Panel for taking a long time in deliberation and considering the matter properly and indicated that he had been reading the seven principles of public life whilst the Panel had been deliberating. He believed that he had upheld them. He made reference to the substantial majority of the votes which he obtained when he was elected as a Borough Councillor and felt that this reflected that the people who had voted for him believed that he was doing his job which he believed included holding officers to account.
- 44.1 In relation to censure and his removal from Area 2 Planning Committee and the other sanctions imposed he was not unhappy but viewed his removal from the Area 2 Planning Committee as hurting the people of Borough Green.
- 45 Whilst the IP did not make any recommendations on the sanctions to be imposed he pointed out that there was no question of suspension of Councillor Taylor as a Councillor within the TMBC arrangements.
- 45.1 The IP believed that Councillor Taylor had good standing with his local constituents.
- 45.2 The IP referred to an article in the Sevenoaks Chronicle dated 7 July 2014 which was after the meeting held on 27 June 2014 to discuss Councillor Taylor's behaviour towards officers. This, he said, referred to Councillor Taylor contacting officers when he suspected that work had been undertaken at IQW without the relevant planning permissions being in place. The Council acted upon that notification and work was stopped until the planning breach

had been rectified. The IP indicated that Councillor Taylor was still doing his duty as a Councillor after his conduct had been called into question.

The Hearing Panel imposed the following sanctions

- 46 The Panel have determined it is appropriate to impose four sanctions in respect of the breach of the TMBC Code of Conduct in this case:
- 46.1 Recommending to Council that Councillor Taylor be issued with a formal censure by Members;
- 46.2 Recommending to Council that Councillor Taylor be removed from Area 2 Planning Committee until the end of April 2017 (or any successor thereof) with effect *immediately from when that decision is properly made under the Council's constitutional rules; [* this point being clarified after a question raised by Councillor Taylor regarding the sanctions at the Hearing and when they would take effect]
- 46.3 Recommending to Council that they issue a press release;
- 46.4 Publishing its findings in respect of Councillor Taylor's conduct on the Council's website.
- 47 The following reasons apply to the recommendations of the Panel.
- 47.1 The recommendations were within the possible range of recommendations which the Panel was entitled to make as they were fair and proportionate and were within the Adopted Arrangements at paragraph 4(a),(b), (k) and (l) respectively of the Hearing Panel Procedure which set out the possible range of sanctions.
- 47.2 The Panel looked at the questions within the Council's Adopted Arrangements in paragraph 4.4 of the Hearing Panel Procedure in coming to this decision:
- (a) What was the Subject Member's intention and did they know that they were failing to follow the Borough Council's Code of Conduct.*

The Panel considered that Councillor Taylor did intend to call the integrity of officers of the Council into disrepute as he had given evidence to that effect and by reason of that should have known that this could have an effect on the reputation of the Council. The Panel agreed with the representation of the Deputy MO on this point.

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

The Panel did not find that relevant training had been given before the incidents in question (submissions of Deputy MO attached to Decision notice on page 2) but recognised that since the allegations had been made Councillor Taylor had been trained on the Code of Conduct in a meeting on

1 July 2015 and therefore training was not considered as a relevant sanction as he had now been trained.

The Panel noted that attempts were made to advise Councillor Taylor about his conduct by senior officers in the meeting on 27 June 2014 but that these were not taken well and Councillor Taylor still carried on with the offending behaviour as set out by the Deputy MO in his submissions where he referred to the post made on BGN website by Councillor Taylor relating to AS's behaviour as allegedly amounting to "little devious tricks".

(c) Has there been a breach of trust.

The Panel considered the representation made by the Deputy MO on this point and agreed that there was a loss of trust between Councillor Taylor and the three senior officers who gave evidence to the Hearing. It agreed that due to the senior positions of these officers and Councillor Taylor seeking to impugn their character in a very public manner to a very wide audience that there had been a breach of trust.

(d) Has there been financial impropriety?

The Panel did not believe there was any allegation or evidence of financial impropriety.

(e) What was the result/impact of failing to follow the Borough Council's Code of Conduct?

The impact of the Conduct was that senior professional officers had been publicly accused of lying which could affect their personal and professional reputation and by implication that of the Council. This was compounded by the accusations being made on a website with world-wide circulation.

(f) How serious was the incident?

The incident was very serious as the comments and accusations which were made by Councillor Taylor were very widely circulated, potentially to a world-wide audience and were not substantiated and proven in the emails and posts which were made and could therefore have brought the Council into disrepute in the minds of a very wide audience. The Panel found this to be especially relevant given the previous very good reputation of the Council as demonstrated by Julie Beilby in her statement.

(g) Does the Subject Member accept that they were at fault?

Councillor Taylor's comments during interview and his representations made to the Panel in the hearing clearly demonstrated that he believed that his conduct was justified. The Panel noted that the IO and officers giving evidence to the hearing all believed that Councillor Taylor genuinely believed that he had been lied to and misled by officers and the Council over planning matters at IQW but that he did not accept that he was at fault.

(h) *Did the Subject Member apologise to the relevant persons?*

Councillor Taylor did not apologise and the Panel were of the view that he would not do so given his firm belief that he was in the right.

(i) *Has the Subject Member previously been reprimanded or warned for similar misconduct?*

No.

(j) *Has the Subject Member previously breached the Borough Council's Code of Conduct?*

No

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

The Panel took into account both the representations made on this point by the Deputy MO and the evidence before the Hearing and in particular the testimony of Councillor Taylor himself and believed that it would be very likely that the offending behaviour would be repeated as Councillor Taylor believed that his behaviour was justified and referred to it as being acceptable when interviewed by the IO.

- 47.3 The Panel considered that the sanctions which they imposed were relevant and proportionate to Councillor Taylor's conduct as he had brought the Council into disrepute through his actions and widely circulated his emails and posts and it was right that the findings against Councillor Taylor should be widely circulated to redress the damage which may have been caused to the Council's reputation and that of its senior officers
- 47.4 In particular the Panel was of the view that Councillor Taylor's removal from the Area 2 Planning Committee (or its successor) was proportionate as the breach found was a very serious one, impugning the reputation of both senior officers and the Council by association which related to planning matters and that the sanction was therefore both relevant and commensurate with the gravity of the conduct by Councillor Taylor.
- 47.5 In relation to the representation made by Councillor Taylor regarding his removal from Area 2 Planning Committee or any successor to it until the end of April 2017 the Panel noted that there are 2 other members who represent Borough Green and Longmill who could represent the ward on behalf of members of the public.
- 47.6 The Panel also took into account Councillor Taylor's right to freedom of expression as set out in article 10 of the European Convention on Human Rights ("ECHR") as they were advised that the imposition of a sanction can interfere with that right.

- 47.6.1 The Panel found that whilst an individual was able to hold opinions and receive and impart information and ideas without any interference by public authority, Article 10(2) of the ECHR provided for the circumstances where such rights can be interfered with (which are fully set out in the representations of the Deputy MO). This included such "restrictions or penalties as are prescribed by law and are necessary in a democratic society...for the protection of the reputation or rights of others."
- 47.6.2 Case-law which was referred to by the Deputy MO in his representations on sanctions established that public officials should be free to carry out their duties "free of perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty."
- 47.6.3 The Panel believed that they were entitled to impose a sanction in view of Councillor Taylor's conduct and that this amounted to a breach of his freedom of expression under article 10(1) but that given that the emails sent by Councillor Taylor and the posts made by him included personal attacks on the integrity of officers of the Council, that this interference was justified "in a democratic society for the protection of the reputation or right of others", those others in this case being the senior officers who had been impugned by his actions. The Panel found that the higher degree of protection which was normally afforded to political expression should not apply in this instance as Councillor Taylor's conduct amounted to a personal attack on public officials carrying out their duties and was a personal attack on their integrity.

Findings on Jurisdictional matters:

The Panel made two jurisdictional decisions at the Hearing:

48. It considered the report of the Deputy MO in the papers and in particular paragraph 1.1.4 c) of that report which requested the Panel to consider whether to exercise its discretion in rule 14.1 of the TMBC adopted arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011 (p 183-212) ("the Adopted Arrangements") to allow Mr Dolton to appear before the Hearing in the place of Mr Goolden and present the report of the Investigating Officer as Mr Goolden was unable to attend.

Rule 14.1: "The Borough Council...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."

The Panel considered the test in paragraph 14.1 of the Adopted Arrangements and found that it was expedient to secure the effective and fair consideration of the allegation against Councillor Taylor to carry on with the Hearing today with Mr Dolton representing the IO. In coming to its decision the Panel noted that neither they nor the Subject Member, Councillor Taylor,

wished to ask any questions of Mr Goolden and that Councillor Taylor had stated that he was happy to proceed with Mr Dolton taking the place of Mr Goolden at the Hearing.

The Panel also considered that Mr Dolton had carried out all of the interviews with the witnesses in this matter and was sufficiently close to the case to be able to act competently in the place of Mr Goolden. They noted that whilst Mr Dolton was not legally qualified that the Panel had the assistance of a legal advisor relating to points of law which may arise. They came to the conclusion that in all of these circumstances further delay in hearing the complaints against Councillor Taylor, to allow Mr Goolden to attend, would not be in the public or Councillor Taylor's interest. The Panel exercised their discretion to allow the Mr Dolton to appear before the Panel in the place of Mr Goolden and Mr Dolton was subsequently referred to as the IO.

49. Councillor Taylor sought to introduce written material before the Hearing which no one had the opportunity to look at prior to the Hearing. The legal advisor and MO raised the point that the Panel could allow this new material to be heard at the Hearing if the Panel exercised its discretion under rule 14.1 set out above in paragraph 48. A copy of the material in question was given to each of the Panel members, the legal advisor, the IP and the IO and Monitoring Officer.

The Panel retired and looked at the material which Councillor Taylor sought to introduce at the Hearing which related to matters going back to the adoption of the Local Plan by Borough Green Parish Council and the planning history of the IQW site. It found that it was fair and expedient to allow Councillor Taylor to present this material when he was putting his case to the Hearing but that as it related to matters which long preceded Councillor Taylor's membership of the Borough Council in January 2014, it could only be relevant to the reasons why Councillor Taylor acted as he did and not to the fact finding part of the proceedings as to whether there was conduct which amounted to a breach of the TMBC Code of Conduct.

The material which Councillor Taylor sought to introduce was relevant to the reasons why Councillor Taylor felt compelled to challenge officers and to use the language he had used in emails and posts concerning Council officers and departments within the Council. The Panel agreed to admit the material at the fact finding part of the Hearing albeit that it was done so on the strict basis that it amounted to mitigation should Councillor Taylor be found to have breached the Code of Conduct, which had not at this point in the proceedings yet been found to have occurred. The Panel were prepared to allow it to be referred to at this point in order that Councillor Taylor would continue to be engaged with the process at the Hearing to secure the effective and fair consideration of the reasons why Councillor Taylor acted as he did.

The Panel noted that the fact finding part of the Hearing was concerned with Councillor Taylor's conduct as a Borough Councillor since January 2014 and the inclusion of this material was only relevant to motive. This point had been dealt with in the report of the Deputy MO at paragraphs 1.1.8 to 1.1.10 (p8).

In coming to their decision the Panel also noted that Councillor Taylor had been told by the IO that the investigation and case would not look beyond his behaviour as a Councillor:

"I think it's very important that we have a context for this interview and meeting and I felt it very relevant that you gave your perspective, as you have done, on the background of the Isles Quarry development from when it first started to today. Erm, but I now have to emphasise to you that our role and my role within this is to gather and consider evidence and facts relating purely to your behaviour whilst interacting with those officers and then indeed our firm will advise the Council, by a report, whether in our opinion, that does or does not breach the Code of Conduct and I want to emphasise that we will not be conducting investigations into the actions of the Council or any officers within the Council or historic actions of officers that used to be in the Council relating to the actual planning application, planning process. I just want to make that clear for the record."

Councillor Taylor responded:

"Well I appreciate that this investigation is purely about my statement about Planning Officers. But what I have found and I will admit I have gone as close to the line of beach of the code as I can, because the only way to get any response ... is to kick hard and keep kicking."

The Panel note that Councillor Taylor was aware that the investigation would not be into matters which pre-dated his membership of the Council. They allowed the papers to be submitted in the fact finding part of the meeting but only on the basis that they are relevant to the reasons why Councillor Taylor felt that he had to act as he did. They were permitted to be presented as mitigation should the Panel find there was a breach of the Code or Conduct at the relevant time in the meeting. The papers did not relate to conduct by Councillor Taylor when he was an elected member of the Council and therefore no finding of fact was made on them.

The Hearing Panel did not make any further recommendation(s)

Appeal

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

Notification of decision

This decision notice is sent to the:

- Councillor Taylor
- Complainant – Councillor Taylor

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 contact our Customer Services on 01732 844522 or email customer.services@tmbc.gov.uk. We welcome calls via Typetalk.

Signed:**Date****Print name:**

JANET SERGHIN

Chairman of the Hearing Panel

Tonbridge and Malling Borough Council

IN THE MATTER OF THE LOCALISM ACT 2011

STANDARDS HEARING PANEL RE: COUNCILLOR MIKE TAYLOR

REPRESENTATIONS OF THE DEPUTY MONITORING OFFICER ON THE APPLICATION OF SANCTIONS

I have three headings under which I would like to address the panel:

- The questions which the panel must consider, according to paragraph 4.1 of the Hearing Procedure at Annex 4 of the Arrangements
- The Right to Freedom of Expression, and in particular Political Expression
- Sanctions

The Questions which the Panel must address

Under the Hearing Procedure, the Panel is required to consider a series of questions, a to k, and in addition any other relevant circumstances or other factors specific to the local environment.

I will briefly touch upon each of those questions in order to draw to your attention those facts which have been established which are of particular relevance to each question:

- (a) What was the subject member's intention and did they know they were failing to follow the Borough Code of Conduct?

According to the report of Jonathan Goolden, at paragraph 7.29 "publicly calling a person a liar and questioning an individual's competence in their job... appears to be intended to humiliate them by circulating those comments to other individuals."

There are a number of instances throughout the course of conduct complained of where comments of this nature are circulated either to a wider audience of PC and/or BC members, and in some occasions, indiscriminately and globally by way of publication on a publicly accessible website.

In particular, I highlight two comments levelled at Adrian Stanfield: (i) an email to all BC members on 14 June 2014 stating that "Adrian's email/ Counsel's opinion is intended to mislead rather than inform" and (ii) a comment, posted on Cllr Taylor's "Borough Green News" website that Mr Stanfield had employed "little devious tricks".

In my submission, these comments clearly call into question Mr Stanfield's professional standing as a Solicitor and it was clearly Cllr Taylor's intention, as set out in the transcript of his interview at page 68 of the Schedule of Evidence, to "challenge the integrity of the senior solicitor".

The intemperate nature of the language used, and Cllr Taylor's confirmation in interview, demonstrates that his intention was to impugn the standing of the senior officers, in front of the members of the Council and BG Parish Council, and the wider public in those instances where the exchanges were subsequently published on his website.

Whilst Cllr Taylor maintains that he believed he was justified in taking the approach that he did, and believes he was the "right side of the line" in relation to the Code of Conduct, in my submission no reasonable person in Cllr Taylor's position could have thought they were complying with the code of the conduct when making these accusations in such a public manner.

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

Cllr Taylor received training on bias and predetermination from the MO on 6 March 2014. However I am not aware that Cllr Taylor received any general training on the Code of Conduct, nor is this generally offered. Cllr Taylor is, however, an experienced Parish Council member and would have been aware of and familiar with acting under a member code of conduct.

The "offending" behaviour, however, continued beyond the 27th June meeting with the MO- the "little devious tricks" comment appearing on the BG News website on 30 June. It therefore seems apparent that Cllr Taylor did not act to change his behaviour even after the MO had taken steps to ensure Cllr Taylor was aware that his behaviour was not acceptable.

- (c) Has there been a breach of trust?

It is apparent that Cllr Taylor has a difficult relationship with a number of the senior officers of the Council, in particular Steve Humphrey, Adrian Stanfield and Julie Bielby. Lindsay Pearson has now retired so any difficulty there is no longer relevant.

There appears to have been no loss of trust with other officers within the Council, and this is demonstrated to some extent by the email exchange with Glenda Egerton on 25 June at page 107 of the Schedule of Evidence and his explanation at pages 71 and 72 of the Schedule of Evidence.

Cllr Taylor characterises his relationship with officers generally as a good relationship, but at times "robust" (Interview, p58 of the Schedule of Evidence). However, it is clear that there is a loss of trust between Cllr Taylor and the three senior officers who have given evidence today. Given the very senior positions of the officers who Cllr Taylor has sought to impugn, and that this was done in a very public manner, I can only conclude that there has been a breach of trust.

- (d) Has there been financial impropriety?

There is no allegation or evidence of any financial impropriety by Cllr Taylor.

- (e) What was the result of failing to follow the code?

- *Cllr Taylor has publicly accused senior officers, including the Council's most senior solicitor, of lying*
- *These accusations were made to a global audience*
- *Such comments damage the reputation of the Council*
- *Comments of this nature also damage the reputation of Councillors generally*

- (f) How serious was the incident?

Given the identity of the officers subject to Cllr Taylor's comments, and the very public nature by which his allegations were made, the incident must be characterised as being particularly serious.

- (g) Does the Subject Member accept that they were at fault?

It is clear that Cllr Taylor believes his course of action was justified under the circumstances, and therefore does not accept that he is at fault.

(h) Did the Subject Member apologise to the relevant persons?

CLlr Taylor has already indicated that he will not apologise for his conduct.

(i) Has the Subject Member previously been reprimanded or warned for similar misconduct?

No.

(j) Has the Subject Member previously breached the Borough Council's code of Conduct?

No.

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

As the Subject Member has indicated a number of times, he believes that his conduct is "acceptable" and "justified" because of the way he feels he has been treated by officers of the Council. He says "respect needs to be earned" and as he sees it, the senior officers concerned have not earned that respect.

Even after being warned that his conduct was unacceptable, the conduct continued. Therefore there is a real risk that there could be further incidents of this nature.

The Right to Freedom of Political Expression

It is established through case law that imposing sanctions on a member can engage the Right to Freedom of Expression under Article 10 of the Convention on Human Rights. It is therefore necessary for the Panel to consider whether Article 10 is engaged in this case and if so, whether any interference is justified under the terms expressed in the HRA and Convention.

I will therefore need to make some rather technical submissions to you now regarding the law in this area. I apologise in advance that this is both technical and lengthy- but your legal adviser should be able to provide further guidance and this forms an important part of your consideration today.

I will begin by setting out the law, both in the Convention on Human Rights and as established through both European and British jurisprudence. I will then apply the law to the present circumstances in order to present you with my conclusions on how Art 10 impacts upon this case.

The right, according to Article 10(1) *"shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority..."*

Art 10(2) provides the circumstances where such rights can be interfered with. It says that *"the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society... for (inter alia) the protection of the reputation or rights of others."*

Under the European jurisprudence, the ECHR has said that *"while freedom of expression is important for everybody, it is especially so for an elected representative of the people..."*

The British Courts have also said that, when considering justification for interference under Article 10(2), “political expression” or “the expression of a political view” attract a higher degree of protection, whilst expressions in personal or abusive terms do not attract the same higher level of protection.

The ECHR draws a distinction between political expression and criticism of civil servants, which by extension must in my submission also apply to Council Officers exercising their official duties. In its judgement in *Janowski v Poland*, the Court said that:

“...It cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions. What is more, civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty...”

In considering whether a finding that a member has breached a code of conduct and/or any sanction imposed had contravened article 10, the Courts have established that there are 3 questions to be asked:

- (1) Was the tribunal entitled as a matter of fact to conclude that the Cllr’s conduct was in breach of the Code;
- (2) If so, was the finding in itself, or the imposition of a sanction prima facie a breach of article 10; and
- (3) If so, was the restriction involved one which was justified by reason of the requirements of article 10(2)

Turning to the facts of this case, on question (1), it can clearly be said on the evidence that the Panel in this case is entitled, as a matter of fact, to conclude that Cllr Taylor was in breach of the code in the manner already set out.

As to question (2), that finding is, prima facie a breach of Cllr Taylor’s Freedom of Expression. In essence, by saying he has breached the code by writing the emails and posting the website comments, the Council is interfering with Cllr Taylor’s right to impart information and ideas.

The third question therefore falls to be considered: firstly, to the finding of a breach, and second to any sanction.

In my submission, whilst general criticism of the Council (and to a lesser degree officers of the Council) could be said to be the expression of a political view thus attracting a higher degree of protection from interference, the same cannot be said of personal comments, such as “little devious tricks”, “you lot in the Developer’s pocket” and referring to an email from Mr Stanfield, publicly, as “bollocks”. In my view such comments do not attract that higher level of protection under Article 10.

Furthermore, the ECHR says that officials should be protected from such attacks, in other words that in order to allow an officer to do his job properly it may be more justifiable under Article 10(2) to restrict someone else’s freedom to impart information and ideas, in this case, Cllr Taylor’s.

In my submission therefore, the Panel is justified in interfering with Cllr Taylor's right to freedom of expression, by its finding of a breach, as that interference is necessary in a democratic society for the protection of the reputation or rights of others.

That third question also needs to be considered in relation to any sanction which the Panel might impose, and I turn now to those sanctions.

Sanctions

[IF BULLYING...:

Cllr Taylor's conduct has been found to fall well below the standard expected of a member. He has sought to intimidate and insult senior officers of the Council, in a concerted and public campaign against them. This cannot be considered as anything other than a very serious matter.

[IF DISREPUTE]

Cllr Taylor has called into question the integrity of the Council's senior officers in a public manner. Furthermore, he has impugned the professional standing of the Council's senior solicitor.

These are serious issues which clearly bring both the Council and Cllr Taylor's own office into disrepute.]

When advised about his conduct, Cllr Taylor considered this as "an attempt to silence him" and instead of heeding the advice, continued the offending behaviour.

Cllr Taylor appears to take some satisfaction in behaving in this manner, and it seems to be a matter of some pride from the tone of posts on his website, that his conduct has been under investigation.

Regardless of what Cllr Taylor believes might "justify" such behaviour, there are standards of conduct which are required of members, even in those circumstances.

Cllr Taylor has received advice on his conduct and it seems apparent that he has not and will not act on that advice. I do not, therefore, recommend training.

In my submission, the matter is not suitable for informal resolution.

Cllr Taylor has already indicated that he will not apologise, and therefore this is not available as part of the range of sanctions should the matter be considered appropriate for informal resolution.

I recommend, in the first instance, that a formal censure should be issued by the Council, reprimanding Cllr Taylor for his behaviour. In my submission this is proportionate and justified in the terms of Article 10(2) of the Convention.

The Council needs to make clear, in a public manner such that those who read or may read the BG News website will also be aware that the posts they have read, were inappropriate and constituted a breach of the members code of conduct. Therefore I also recommend that the findings of the Panel are published on the Council's website, and a press release is issued.

Cllr Taylor sits on two committees- Licensing and Appeals, and Area 2 Planning Committee. The offending behaviour arises directly from planning issues.

The Panel needs to consider whether, in light of the very serious nature of the breaches of the code, it is appropriate for Cllr Taylor to continue to sit on these committees. It is open to the Panel to recommend to Full Council that Cllr Taylor be removed from either one or both of these committees.

I have considered at length whether my representations to the Panel should advocate imposing such a sanction. However, on balance I have decided not to seek to influence the Panel in either direction. Instead, I ask the panel to consider the following 3 points as to whether the sanction is appropriate in this case:

- In light of the nature of the comments made by Cllr Taylor, and who they were made against, is any other sanction sufficiently punitive?
- Would any other sanction be effective in correcting the offending behaviour or sending the "right message" about serious breaches of the code?
- Given that the background to Cllr Taylor's comments about the officers stem from planning issues, is it appropriate for Cllr Taylor to continue to sit on that committee and be a decision maker in respect of planning matters?

In addition, the Panel must again give careful consideration whether imposing such a penalty and restriction on Cllr Taylor's political activity is justified in the terms of Article 10(2) of the Convention.

IN THE MATTER OF THE LOCALISM ACT 2011

STANDARDS HEARING PANEL RE: COUNCILLOR MIKE TAYLOR

LEGAL SUBMISSIONS ON THE RIGHT TO FREEDOM OF EXPRESSION UNDER ARTICLE 10 OF THE CONVENTION ON HUMAN RIGHTS

It is established through case law that imposing sanctions on a member can engage the Right to Freedom of Expression under Article 10 of the Convention on Human Rights. It is therefore necessary for the Panel to consider whether Article 10 is engaged in this case and if so, whether any interference is justified under the terms expressed in the HRA and Convention.

The right, according to Article 10(1) *“shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority...”*

Art 10(2) provides the circumstances where such rights can be interfered with. It says that *“the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society... for (inter alia) the protection of the reputation or rights of others.”*

Under the European jurisprudence, the ECHR has said that *“while freedom of expression is important for everybody, it is especially so for an elected representative of the people...”*¹

The British Courts have also said that, when considering justification for interference under Article 10(2), “political expression” or “the expression of a political view” attract a higher degree of protection, whilst expressions in personal or abusive terms do not attract the same higher level of protection.²

The ECHR draws a distinction between political expression and criticism of civil servants, which by extension must in my submission also apply to Council Officers exercising their official duties. In its judgement in *Janowski v Poland*³, the Court said that:

“...It cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions. What is more, civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty...”

In considering whether a finding that a member has breached a code of conduct and/or any sanction imposed had contravened article 10, the Courts have established⁴ that there are 3 questions to be asked:

- (1) Was the tribunal entitled as a matter of fact to conclude that the Cllr’s conduct was in breach of the Code;

¹ *Castells v Spain* (1992) 14 EHRR 445

² *R (Dennehy) v London Borough of Ealing* [2013] EWHC 4102 at para 24

³ ECHR Judgement, January 21, 1999

⁴ *Sanders v Kingston (No.1)* [2005] EWHC 1145 (Admin)

- (2) If so, was the finding in itself, or the imposition of a sanction prima facie a breach of article 10; and
- (3) If so, was the restriction involved one which was justified by reason of the requirements of article 10(2)

Turning to the facts of this case, on question (1), it can clearly be said on the evidence that the Panel in this case is entitled, as a matter of fact, to conclude that Cllr Taylor was in breach of the code in the manner already set out.

As to question (2), that finding is, prima facie a breach of Cllr Taylor's Freedom of Expression. In essence, by saying he has breached the code by writing the emails and posting the website comments, the Council is interfering with Cllr Taylor's right to impart information and ideas.

The third question therefore falls to be considered: firstly, to the finding of a breach, and second to any sanction.

In my submission, whilst general criticism of the Council (and to a lesser degree officers of the Council) could be said to be the expression of a political view thus attracting a higher degree of protection from interference, the same cannot be said of personal comments, such as "little devious tricks"⁵, "you lot in the Developer's pocket"⁶ and referring to an email from Mr Stanfield, publicly, as "bollocks"⁷. In my view such comments do not attract that higher level of protection under Article 10.

Furthermore, the ECHR says that officials should be protected from such attacks, in other words that in order to allow an officer to do his job properly it may be more justifiable under Article 10(2) to restrict someone else's freedom to impart information and ideas, in this case, Cllr Taylor's.

In my submission therefore, the Panel is justified in interfering with Cllr Taylor's right to freedom of expression, by its finding of a breach, as that interference is necessary in a democratic society for the protection of the reputation or rights of others.

Kevin Toogood

12 October 2015

⁵ JTG12, Borough Green News 30/6/2014 at page 112 of the Schedule of Evidence

⁶ Interview, page 60 of the Schedule of Evidence

⁷ JTG10, email 13 June 2014 at page 91 of the Schedule of Evidence

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:

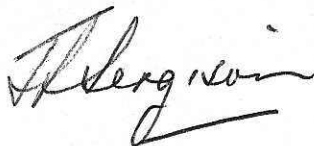
Councillor Mike Taylor

Complainant

Clerk to the Borough Green Parish Council

4th January 2016

Signed



Cllr Janet Sergison

Chairman of the Hearing Panel

Tonbridge & Malling Borough Council

TONBRIDGE & MALLING BOROUGH COUNCIL

JOINT STANDARDS COMMITTEE

15 June 2016

Report of the Monitoring Officer

Part 1- Public

Matters for Information

1 CASELAW UPDATE

1.1 Introduction

1.1.1 This report updates Members on recent cases and other guidance relevant to the work of the Joint Committee.

1.2 Kelton v Wiltshire Council & Others – bias and apparent bias

1.2.1 Members will be familiar with the legal duty of public authorities to avoid bias in their decision making. The law on bias and predetermination (which is a particular form of bias) is part of the general legal obligation on public authorities to act fairly.

1.2.2 Decision makers are entitled to be predisposed to particular views. However, predetermination occurs where someone closes their mind to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision.

1.2.3 Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because

- (a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and
- (b) the matter was relevant to the decision.

1.2.6 The recent case of Kelton v Wiltshire Council & others concerned a challenge to a local authority planning decision on the ground of apparent bias. A Councillor on the Council's planning Committee, whose vote carried the decision in favour of granting outline planning permission for the development in question, was a Director of the Housing Association which had an interest in the affordable housing element of the development. As Director of this Housing Association the Councillor in question received some £3000 per annum.

- 1.2.8 The Councillor in question had declared that he was a member of the Housing Association Board but, because it was only a prospective partner rather than the applicant for permission, he decided to vote on the application, which was passed by one vote. The Housing Association subsequently became the developers' preferred bidder for the affordable housing.
- 1.2.9 On the facts of this case, the Administrative Court found that the Councillor in question had no direct pecuniary or proprietary interest in the application so as to automatically disqualify him from participating and voting on the planning application. Neither did the Court find that the Councillor had a Disclosable Pecuniary Interest (DPI).
- 1.2.10 Applying the legal test for apparent bias i.e. whether the fair minded and informed observer, having regard to all material facts, would conclude there was a real possibility of bias, the Court held that the participation of the Councillor in the planning meeting gave rise to an appearance of potential bias.
- 1.2.11 It was plainly in the association's interests, and those of the Councillor as director, for the planning application to be approved. The association had committed time, resources and expertise in working with the developers on the affordable housing. It was highly unlikely that it would have done so unless it believed that it would be awarded a contract once permission was granted. Apparent bias could arise even in a case where a councillor had not voted. The private interests of the Councillor were engaged by the vote and it had been wrong for him to have participated in the meeting. The decision to grant planning permission was, accordingly, quashed.

1.3 R (on the application of Freud) v University of Oxford – Disclosable Pecuniary Interests

- 1.3.1 This case arose out of a decision to grant planning permission for a new School of Government building for the University of Oxford. One of the members of the committee was employed by the university, albeit a different part. The complaint was not that the Councillor in question had failed to put his interest in the register. The complaint was as to his participation in the debate at all.
- 1.3.2 The Court held that for him to have been obliged not to participate in the debate, it would have to be shown that he had a disclosable pecuniary interest in the subject matter of the discussion. He had no pecuniary interest in this subject matter. He was not in any part of the university which was promoting it. He had no contract to deal with it. He had nothing in that respect which could amount to a disclosable pecuniary interest in that matter.

1.3 Disqualification of Councillors – written question in the House of Commons

- 1.3.1 Questions were tabled in the House of Commons in February & March 2016 by Debbie Abrahams MP concerning the ability of local authorities to disqualify Councillors convicted of child sex offences whose punishment was lower than the 3 month suspended or custodial sentence threshold required for disqualification.

1.3.2 In response to these questions the Secretary of State for Communities and Local Government confirmed that his department intended to consult on proposals to bring the legislative rules in line with modern sentencing guidelines. The review will also consider whether the provisions of the Localism Act 2011 have any implications for new legislative rules on disqualification.

1.4 House of Commons Briefing Paper on local government standards

1.4.1 I attach at **Annex 1** a copy of a recent briefing paper issued by the House of Commons library. Whilst the content of the paper will be familiar to Members of the Committee it nevertheless provides a useful reminder of the statutory framework

1.4.2 At paragraph 3.3 of the paper reference is also made to the first conviction under the Localism Act 2011.

1.5 Legal Implications

1.5.1 As set out above.

1.6 Financial and Value for Money Implications

1.6.1 None arising from this report.

contact: Adrian Stanfield

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Director of Central Services & Monitoring Officer

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BRIEFING PAPER

Number 05707, 9 May 2016

Local government standards in England

By Mark Sandford

Inside:

1. Councillors' conduct and interests
2. Codes of conduct
3. Complaints about breaches of codes of conduct
4. The standards regimes in devolved areas



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Mark Sandford

Summary

The Coalition Government announced in its [Programme for Government](#) in May 2010 that the “Standards Board regime”, regulating the treatment of councillors’ conduct and pecuniary interests, was to be abolished. This was done via the [Localism Act 2011](#). Standards for England (formerly the Standards Board) was abolished on 1 April 2012. This note outlines the new regime in England.

The new standards arrangements replace the Labour Government’s ethical framework for local councillors. This was introduced by the *Local Government Act 2000* and amended by the *Local Government and Public Involvement in Health Act 2007*.

Local government standards are devolved to Scotland, Wales and Northern Ireland. The bulk of this note addresses the regime in England, with some further links to information regarding the devolved territories.

1. Councillors' conduct and interests

The Coalition Government's *Programme for Government* committed to abolishing Standards for England, the local government standards board for England established by the *Local Government Act 2000*. This was an England-wide regulatory regime regulating councillors' conduct and registration of pecuniary interests, with sanctions applied by the Standards Board. Abolishing the Standards Board was a long-standing Conservative commitment. The *Localism Act 2011* included the following measures:

- The abolition of Standards for England (previously the 'Local Government Standards Board for England');
- A requirement for local authorities to promote and maintain high standards of conduct;
- Provision for the introduction of local codes of conduct and local responsibility for investigating alleged breaches of those codes. Local authorities were to establish a code, which was to be based on the seven 'Nolan principles' of public life,¹ and to specify sanctions for breaking it;
- Requirements concerning how local codes of conduct should treat the registration and disclosure of pecuniary and other interests;
- The creation of a new criminal offence of failing to comply with the statutory requirements for disclosure of pecuniary interests.

The *Localism Bill* originally entirely removed the requirement for local councils to maintain a code of conduct, intending to make it a voluntary matter. The provisions in the Act were introduced in the House of Lords.

A DCLG press release stated:

These new measures, outlined in the Localism Act, will replace the bureaucratic and controversial Standards Board regime, which ministers believe had become a system of nuisance complaints and petty, sometimes malicious, allegations of councillor misconduct that sapped public confidence in local democracy.²

Local government standards are devolved to Scotland, Wales and Northern Ireland. The bulk of this note addresses the regime in England, with some links to information regarding the devolved territories.

These legislative changes apply to codes of conduct for councillors, not to those for local authority staff. There has never been a statutory code covering the conduct of local authority staff in England. The *Local Government Act 2000* contained a power to introduce one, but this power was repealed by the *Localism Act 2011*, so one cannot now be introduced in England. Local authorities are free to decide to institute a code of conduct for their own staff: alternatively, staff employment contracts may contain requirements regarding their conduct. Statutory

¹ These are set out in statute in the *Localism Act 2011*, s. 29

² [New rules to ensure greater town hall transparency](#), DCLG press release, 28 June 2012

5 Local government standards in England

codes of conduct for local authority staff do exist in Scotland, Wales and Northern Ireland: these must be adopted by councils in those areas.³

³ See Northern Ireland Local Government Staff Commission, [*Code of Conduct for Local Government Employees*](#), 2004; the [*Code of Conduct \(Qualifying Local Government Employees\) \(Wales\) Order 2001*](#) (SI 2001/2280); [*National Code of Conduct for Local Government Employees in Scotland*](#), 2015

2. Codes of conduct

2.1 Drawing up codes of conduct

Section 27 of the *Localism Act 2011* requires relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'independent person' to investigate alleged breaches, and sanctions to be imposed on any councillors who breach the code.

There is no 'official' model code of conduct. Councils may choose to retain the standard code of conduct used under the previous regime, most recently updated in 2007.⁴ Since the passage of the 2011 Act, model codes of conduct have been produced by DCLG, the Local Government Association, and the National Association of Local Councils (NALC).⁵

Parish and town councils are covered by the requirements to have a code of conduct and to register interests. They may choose to opt in to the code of conduct adopted by their principal authority (the local district or unitary council).⁶

Co-opted members of local authorities are covered by local codes of conduct in the same way as elected members.

There is no national code of conduct for local authority staff in England, though many councils operate their own codes of conduct for staff. A power existed in section 82 of the *Local Government Act 2000* to introduce a national code of conduct for local authority employees. However, no such code was ever introduced. The power was repealed by Schedule 4 paragraph 49 of the *Localism Act 2011*.

In Wales, schedule 4 of the *Public Service Ombudsman (Wales) Act 2005* made the Public Service Ombudsman for Wales responsible for investigating complaints against council staff in Wales.

2.2 How interests must be registered

Alongside the requirement to draw up a code of conduct, the *Localism Act 2011* strengthens requirements on members to register and disclose interests. Schedule 2 of the *Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* lists the disclosable pecuniary interests specified for the purposes of the Act.

Councillors must notify the monitoring officer of their local authority of any disclosable pecuniary interests, within 28 days of taking up office. As with the code of conduct, the requirement to disclose pecuniary

⁴ The *Local Authorities (Model Code of Conduct) Order 2007* (SI 2007/1159)

⁵ See *Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity*, DCLG, 11 April 2012; *New code of conduct for parish and town councils*, NALC media release, 20 June 2012; LGA, *New standards for councillors*, 12 April 2012

⁶ See the *Localism Act 2011*, section 27 (3)

interests applies to co-opted members as well as to elected ones. Councillors who were already in office when the new code of conduct came into force were required to declare their interests immediately: they could not wait until they were next elected to the council. Any interests must also be disclosed at a meeting of the council if they are relevant to the matters under discussion.

Authorities must maintain a register of councillors' interests, and publish it. Registered interests may be excluded from versions of the register that are available for public inspection or published where a member and monitoring officer agree that the disclosure of these details could lead to harm or intimidation of the member or their family.

The requirements to register interests apply to either an interest of the member or an interest of the member's spouse, civil partner or partner. However, guidance issued by DCLG states that the member does not have to differentiate between their own or their spouse/civil partner/partners interests or to name them:

Does my spouse's or civil partner's name need to appear on the register of interests?

No. For the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is your disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.⁷

2.3 Dispensations

Councillors may apply to the council for a 'dispensation' to allow them to take part in a debate from which they would otherwise be debarred by the nature of their pecuniary interests. A dispensation may be granted for any reason, but the Act specifies a number of scenarios in which this may be done: this includes so many councillors having interests that the meeting cannot proceed, or the political balance of the meeting being substantially affected. A dispensation may last for a maximum of four years.

Guidance published in September 2013 clarified that owning a property in the local authority area does not constitute a disclosable pecuniary interest for the purposes of setting council tax.⁸ Councillors owning property in the council area would be expected to declare this as an interest, but it is not a disclosable pecuniary interest. Therefore a councillor is not prevented from taking part in a debate on that issue, nor would they need to seek a dispensation from the council to take part. Nevertheless, some councils have granted four-year dispensations on this point, to ensure compliance with the 2011 Act.

⁷ DCLG, [Openness and transparency on personal interests: A guide for councillors](#), 2012, p4

⁸ DCLG, [Openness and transparency on personal interests](#), September 2013, p. 7-8

3. Complaints about breaches of codes of conduct

3.1 Investigating alleged breaches

The 2011 Act requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the code of conduct, and arrangements under which decisions on allegation may be made. The Act removed the statutory requirement for local authorities to have a standards committee, found in the previous regime, although authorities are free to set one up.

If either a complainant, or the councillor against whom a complaint has been made, is unhappy with the way in which the local authority resolves the complaint, there is no higher authority to which they may appeal. Neither the Local Government Ombudsman nor the Department for Communities and Local Government has a role in respect of councillors' conduct or registration of pecuniary interests.

The powers of the local authority in relation to alleged breaches are for local determination, following advice from the authority's Monitoring Officer or legal team. These powers might include censure or the removal of a member from a committee, but the authority cannot disqualify or suspend councillors. Standards for England was able to suspend councillors under the previous regime from the 2000 Act.

3.2 The independent person

Local authorities must appoint at least one 'independent person' to advise the council before it makes a decision on an allegation.⁹ There are restrictions on who can be appointed as the independent person; they cannot be a councillor or officer, or a relative or close friend of one.¹⁰ The independent person must be consulted by the authority if an allegation received, and may be consulted by a councillor who is the subject of an allegation.

Individual authorities are to determine how the independent person would work as part of their local standards regime. Baroness Hanham said during debate on the *Localism Bill* in the House of Lords:

I want to make it clear that whatever the system and whether local authorities have independent members in that committee structure, they will still be required to have a further independent member [i.e. the independent person] who will act outside the committee system and will have to be referred to.¹¹

⁹ See section 28 (7) of the 2011 Act.

¹⁰ The *Localism Act 2011* defines the term 'relative' (see section 28 (10)), but not the term 'close friend'.

¹¹ HL Deb 31 Oct 2011 c1051. A useful discussion of some of the principles involved is provided on [the website of the Association of Council Secretaries and Solicitors](#).

3.3 Sanctions

It is a criminal offence if a member or co-opted member fails, without reasonable excuse, to comply with the requirements to register or declare disclosable pecuniary interests.

It is also a criminal offence to take part in council business at meetings, or act alone on behalf of the council, when prevented from doing so by a conflict caused by disclosable pecuniary interests. This applies only to *pecuniary* interests, not to any breaches of the other elements of a code of conduct.

Either offence is punishable by a fine of up to level 5 (currently an unlimited amount), and an order disqualifying the person from being a member of a relevant authority for up to five years. A prosecution must be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions.

The first case brought under this part of the 2011 Act reached judgment in early 2015. Spencer Flower, former leader of Dorset County Council, was found guilty of failing to declare an interest as a non-executive director of a housing association before voting on the county council's housing strategy. The court regarded the impact of his offence as minimal and gave him a conditional six-month discharge.

4. The standards regimes in devolved areas

4.1 Scotland

Local government standards in Scotland are governed by the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#). This Act applies a series of ethical standards to local councillors and the board members of specified public bodies. The standards are based on the 'Nolan principles' (see above) and are applied by the [Commissioner for Ethical Standards in Public Life in Scotland](#) (the CES). The CES reports on complaints to the Standards Commission for Scotland, who may then decide to hold a hearing and apply a sanction to the councillor if appropriate. Sanctions may include suspending or disqualifying councillors.¹²

The [latest edition of the Councillors' Code of Conduct](#) dates from 2010. It is published by the Standards Commission for Scotland. It covers matters such as relations with council staff, dealing with gifts and hospitality, use of council facilities, and registration of interests. Employment, ownership of property, directorships and contracts, shares, election expenses and non-financial interests must be registered with the local authority.

As in England, a dispensation may be granted to councillors to speak and vote in meetings when they have pecuniary interests in the matter under discussion. Applications for dispensations must be made to the Standards Commission.

4.2 Wales

A Standards Board for Wales was set up in 2001 under the *Local Government Act 2000* (which covered England and Wales). This mirrored its English counterpart. It was absorbed into the Public Services Ombudsman for Wales (PSOW) when the latter was established in 2004-5.

Councillors in Wales are required to comply with the model code of conduct set out in the Schedule to the [Local Authorities \(Model Code of Conduct\) \(Wales\) Order 2008](#) (SI 2008/788). Guidance on the Code is issued by the Public Services Ombudsman for Wales.¹³ Potential breaches of the Code include bullying and harassment, disclosing confidential information, making improper use of the office of councillor, and failing to reach decisions objectively.

¹² The relevant legislation is the [Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013](#).

¹³ Public Services Ombudsman for Wales, [The Code of Conduct for members of local authorities in Wales](#), March 2015

Dispensations to speak at meetings where a councillor has pecuniary interests must be applied for from local authority standards committees.¹⁴

The Code requires the registration of interests with the councillor's local authority. The PSOW has the power to suspend or disqualify councillors who are found to have breached the code. A case in 2014, *Heesom v PSOW*, covered a number of points regarding the power to suspend or disqualify and the interaction of these provisions with human rights legislation.¹⁵

4.3 Northern Ireland

The *Local Government Act (Northern Ireland) 2014* permits the Northern Ireland Executive to issue a code of conduct, to be monitored by the Northern Ireland Ombudsman. The initial Code [was issued in May 2014](#). The code includes 12 principles of conduct and a number of rules. Complaints of breaches to the Code must be made to the Northern Ireland Commissioner for Complaints, who has produced [guidance for councillors](#) on interpretation of the Code. The Commissioner may suspend or disqualify a councillor found to have breached the code. S/he may also make recommendations to the local authority in question.

Potential breaches of the Code include improper use of the councillor's position, improper use of council resources, and the failure to register gifts. The Code also requires local authority chief executives to ensure that a register of members' interests is maintained. Interests which must be registered include property owned, interests in companies, any remuneration, and any position of responsibility. A dispensation can be granted by the Northern Ireland Department of the Environment to allow councillors to speak in meetings where their interests would otherwise prevent them from doing so.

¹⁴ Ibid., p. 35

¹⁵ See the account of the case, plus a link to the judgment, on [the website of Bindman and Partners](#).

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Agenda Item 6

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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Agenda Item 7

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT
INFORMATION**

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Agenda Item 8

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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