

TONBRIDGE AND MALLING BOROUGH COUNCIL

STANDARDS HEARING PANEL

Monday, 4th January, 2016

Present: Cllr Miss J L Sergison (Chairman), Cllr D J Cure (Vice-Chairman),
Cllr D A S Davis (Vice-Chairman), Cllr Mrs P A Bates,
Cllr Mrs B A Brown, Mr D Thornewell (Parish Council Representative)
and Mr J M Gledhill (Independent Person)

PART 1 - PUBLIC

SHS 16/1 DECLARATIONS OF INTEREST

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

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

SHS 16/2 THE HEARING PANEL TO DETERMINE WHETHER THE CONFIDENTIAL REPORT MAY BE CONSIDERED IN PUBLIC

The Hearing Panel was advised that the Hearing should be held in public unless it determined that there was a good reason to exclude the public.

RESOLVED: That the allegation that a member of Tonbridge and Malling Borough Council and of Borough Green Parish Council had breached the Codes of Conduct of those bodies be considered in public.

SHS 16/3 CODE OF CONDUCT COMPLAINT AGAINST A BOROUGH AND PARISH COUNCILLOR

The Hearing Panel of the Joint Standards Committee gave consideration to an allegation the Councillor Mike Taylor had breached the Borough Council's Code of Conduct and that of Borough Green Parish Council, of which he was also a member.

The Panel received the report of the independent external investigator (Investigating Officer), Mr Richard Lingard, Solicitor, who had been appointed to carry out the investigation into the allegation. The report contained details of the relevant legislation and protocols, evidence gathered, witness statements, a summary of the material facts and Councillor Taylor's response to the complaint. The Investigating Officer made an oral presentation to the Panel regarding the complaint made by Mr Barry Hughes, a resident of Borough Green, about the conduct of Councillor Mike Taylor of Tonbridge and Malling Borough Council and

Borough Green Parish Council in respect of a letter Councillor Taylor had sent to the Planning Inspectorate. The report concluded that there had been a breach of the Codes of Conduct of the two authorities.

The Panel was requested to look at additional material introduced by Councillor Taylor prior to the Hearing which related to his relationship to the complainant as a member of Borough Green Parish Council.

The Panel noted that Councillor Taylor had agreed to the findings of fact in the Investigating Officer's report. The Panel considered carefully the papers before it, determined the facts and found as follows:

- (1) In respect of the Borough Green Parish Council 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. Councillor Taylor had acknowledged that he had signed the letter in that manner to give it greater weight.
- (2) Furthermore, Councillor Taylor had implied that, by the repeated use of the word "we" in the letter, he was acting for the Parish Council. In interview with the Investigating Officer Councillor Taylor had confirmed that he was acting in that capacity as he believed he was always "all three people" (i.e. a Borough Councillor, a Parish Councillor and a member of the public). It was apparent that he was purporting to act in a representative capacity.
- (3) The BGPC code required 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 the Parish Council, 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.
- (4) The final paragraph of the letter was disrespectful to the Complainant, who was an ordinary member of the public, although it was alleged (with no evidence) that the Complainant had sought to improperly influence a planning decision.
- (5) The letter as a whole was disrespectful to the Borough Council in general and to its planning officers in particular.
- (6) 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 described Councillor Taylor as a “ward member for Borough Green and Long Mill” and gave a TMBC email contact address. Councillor Taylor had confirmed that he had used this letterheaded paper because he believed that it would carry more weight with the planning inspectorate.

- (7) In interview with the Investigating Officer Councillor Taylor had confirmed that he was acting in that capacity as he believed he was always “all three people” (i.e. a Borough Councillor, a Parish Councillor and a member of the public). It was apparent that he was purporting to act in a representative capacity.
- (8) The letter implied that the Borough Council ignored its residents and that officers allowed themselves to be unduly influenced.
- (9) It was clear from the oral evidence given by Councillor Taylor that there was a long-standing dispute between him 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 did. This was not acceptable conduct for a Councillor.
- (10) The Panel accepted 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 a former member would have about how the planning system operated than an average member of the public. However there was no evidence in this case that any influence was exerted by the Complainant. Even if there was any influence, there was no evidence that any such influence was improper.
- (11) The Panel found it surprising that Councillor Taylor, as a knowledgeable member of the Authority, had not 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 Planning Inspectorate. It was notable that the planning application had not been “called in” by Councillor Taylor for determination by a planning committee (which as a ward member for the area he would have been entitled to do) nor by any of his ward colleagues.
- (12) The Panel 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.

In coming to the above conclusions the Panel had regard to the protection afforded to the right of 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 and agreed with the conclusions set out in that advice that, in the circumstances the Panel was justified in interfering with Councillor Taylor's right of freedom of expression by finding a breach of the Codes of Conduct.

Having found that there had been a breach of the Codes of Conduct the adopted arrangements for dealing with complaints required that the Panel heard representations from the Monitoring Officer ("MO") and the Independent Person ("IP") on whether there should be any sanctions imposed. The Panel was advised that the Council's adopted arrangements for dealing with Hearings contained the range of possible sanctions which the Panel could make and noted that it was not entitled to apply or recommend any other sanctions. In coming to its conclusions on the sanctions the Panel again had regard to Councillor Taylor's right to freedom of expression and the written legal advice provided. The Panel was satisfied that the proposed sanctions were the minimum required to uphold the public interest in local government being conducted to standards which maintained public confidence.

The Hearing Panel therefore

RESOLVED: That the following sanctions be imposed

1. In relation to the Code of Conduct of Borough Green Parish Council, the Panel's findings be reported to the Parish Council and the Panel's findings be published as follows
 - by 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 within the Borough.
2. In relation to the Tonbridge and Malling Borough Council Code of Conduct the Panel recommended that the Borough Council issue a formal censure to Councillor Taylor. In addition, the Panel resolved to send a formal letter to Councillor Taylor, the terms of which to be finalised by the Panel in due course. The Panel's findings to be published in the same manner as set out above.

MATTERS FOR CONSIDERATION IN PRIVATE

SHS 16/4 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 3.05 pm
having commenced at 9.30 am