

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

Julie Beilby BSc (Hons) MBA

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

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
committee.services@tmbc.gov.uk

11December 2015

To: MEMBERS OF THE STANDARDS HEARING PANEL
(Copies to all Members of the Council)

**NB ONLY MEMBERS
OF THE PANEL MAY
PARTICIPATE**

Dear Sir/Madam

Your attendance is requested at a meeting of the Standards Hearing Panel to be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Monday, 4th January, 2016 commencing at 9.30 am

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

PART 1 - PUBLIC

1. Apologies for absence
2. Declarations of interest

Decisions to be taken by the Committee

3. The Hearing Panel to determine whether the confidential report may be considered in public

Matters for consideration in Private

4. Exclusion of Press and Public

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

PART 2 - PRIVATE

Decisions to be taken by the Committee

5. Code of Conduct Complaint against a Borough and Parish Councillor 5 - 74

(Reasons: LGA 1972 Sch 12A Paragraph 1 and 2 – Information relating to an individual and information which is likely to reveal the identity of an individual)

MEMBERSHIP

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

Cllr Mrs P A Bates
Cllr Mrs B A Brown

Mr D Thornewell
Mr J M Gledhill (Independent Person)

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TONBRIDGE & MALLING BOROUGH COUNCIL

HEARING PANEL OF THE JOINT STANDARDS COMMITTEE

04 January 2016

Report of the Monitoring Officer

Part 2 - Private

Delegated

LGA 1972 - Sch 12A Paragraph 1 and 2 – Information relating to an individual and information which is likely to reveal the identity of an individual

1 CODE OF CONDUCT COMPLAINT

Members are asked to consider the report of Mr Richard Lingard Solicitor in respect of a complaint made by Mr Barry Hughes that Councillor Mike Taylor has breached the Codes of Conduct of Tonbridge and Malling Borough Council and Borough Green Parish Council.

1.1 Introduction

1.1.1 On 6 March 2015 I received a complaint from Mr Barry Hughes, a resident of Borough Green about the conduct of Cllr Mike Taylor of Tonbridge and Malling Borough Council (“TMBC”) and Borough Green Parish Council (“BGPC”).

1.1.2 The allegation arises from a letter sent by Cllr Taylor to the Planning Inspectorate in relation to an application for planning permission to extend 13 Harrison Road, Borough Green, a property adjacent to Mr Hughes’ property at number 11.

1.1.3 In that letter, which Cllr Taylor states is written because of concerns voiced to him, he observes that because the sole objector [Mr Hughes] ‘*was previously a long serving Parish Councillor, and ex Chair and Vice Chair, a long serving 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*’.

1.1.4 Mr Hughes complained that Cllr Taylor’s letter was ‘*an attempt to bring [him], the Borough Council and the whole planning process into disrepute by innuendo and inference without any shred of evidence*’.

1.1.5 The complaint passed both of the initial assessment tests i.e. the legal jurisdiction test and the local assessment criteria test. Having consulted the Chairman, Vice-

Chairmen and Independent Person(s), my view was that the complaint should proceed to investigation.

- 1.1.6 The investigatory functions in respect of this matter have been delegated to an independent investigator. Mr Lingard is a Solicitor and former Head of Legal & Democratic Services at Guildford Borough Council. He is experienced in acting as an independent investigator, pursuant to section 82A of the Local Government Act 2000
- 1.1.7 A copy of Mr Lingard's report is attached as **Annex 1**. The report is confidential at this stage pursuant to paragraphs 1 and 2 of Schedule 12A to the Local Government Act 1972. As with all exempt information decisions, the Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure. In most cases the public interest in transparent decision making by the Sub-Committee will outweigh the subject member's interest in limiting publication of an unproven allegation that has yet to be determined. In the present case Councillor Taylor has indicated that he is happy for all of the proceedings to be held in public.
- 1.1.8 If the Sub-Committee are minded to hold the hearing in public, then copies of the Investigation Report will be distributed to any persons present, and published on the Council's website.
- 1.1.9 In summary Mr Lingard has concluded that Councillor Taylor breached the Codes of Conduct for Tonbridge and Malling Borough Council and Borough Green Parish Council.

1.2 Legal Implications

- 1.2.1 Section 28(4) of the Localism Act 2011 requires that *"a failure to comply with a relevant authority's code of conduct is not to be dealt with otherwise than in accordance with the arrangements made under subsection (6)..."*
- 1.2.2 Those arrangements are the "Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011" as adopted by the Council and attached to this report at **Annex 2**.
- 1.2.3 Therefore the entire procedure for dealing with the allegation is contained within those arrangements.
- 1.2.4 Paragraph 14 of the Arrangements provides that either a Hearing Panel or Monitoring Officer has *"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."*

1.3 Key Issues/ recommendations

- 1.3.1 The Panel are asked to consider whether Councillor Taylor has breached the provisions of the Tonbridge & Malling Borough Council Code of Conduct, and the Borough Green Parish Council Code of Conduct.
- 1.3.2 The role of the Hearing Panel is to decide whether it agrees with the conclusions set out in the report of the Investigating Officer. The relevant standard of proof is the civil standard i.e. the balance of probabilities. This means that the Panel has to be satisfied that it is more likely than not that the Code in question has been breached.
- 1.3.3 If the Hearing Panel concludes that there has been a breach of the Code(s), the available sanctions are set out at paragraph 4 of the 'Procedure for Investigating The Complaint' at **Annex 2**.

contact: Adrian Stanfield

Adrian Stanfield
Director of Central Services & Monitoring Officer

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

Private & Confidential

Final Version

13 October 2015

Richard Lingard LLB
Solicitor

7 Downside Road
Guildford
Surrey
GU4 8PH

T: 01483 537614
M: 07769 691370
E: richardglingard@gmail.com

ICO Registration No: Z27409852

Richard Lingard – Curriculum Vitae

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

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

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

EXECUTIVE SUMMARY

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

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

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

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

1. THE COMPLAINT

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

2. PROVISIONS CONSIDERED

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

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

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

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

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

3. PROCESS TO DATE

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

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

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

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

4. MR. BARRY HUGHES

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

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

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

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

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

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

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

5. COUNCILLOR TAYLOR’S RESPONSE TO THE COMPLAINT

- 5.1 I interviewed Cllr Taylor (MT) in the Parish Office at Borough Green Village Hall on Tuesday 1 September.
- 5.2 In accordance with my normal practice and with his consent I made a digital audio recording of our conversation and used it as the basis of a draft note that I subsequently submitted to Cllr Taylor for comment. He approved my draft with minor amendments and the following paragraphs are drawn from that note.
- 5.3 MT’s membership of BGPC initially ran from 2000 to 2003 and then again from 2009 to the present. He was most recently re-elected to office on 6 May 2014. He has been Chairman of BGPC since 2011.
- 5.4 He is also one of the TMBC Members for Borough Green & Longmill, having initially been elected at a by-election on 9 January 2014 and re-elected in May 2015.
- 5.5 He has lived in Borough Green since about 1968 and retired from his job in the road haulage industry in 2004.
- 5.6 He has served on a number of TMBC’s Committees, including Area 2 Planning Committee, the Planning & Transportation Committee, Licensing Committee and the Parish Partnership Panel. He told me that BGPC does not run a committee system but considers all matters at monthly meetings of the whole Council, with occasional EGMs. There are eleven parish councillors.
- 5.7 MT confirmed that he was aware of the nature of the complaint against him and that the planning application that gave rise to his letter was the second of three submitted by Mr. & Mrs Haslam, the owners of 13 Harrison Road.
- 5.8 He explained the procedure by which BGPC responds to consultations on planning applications and confirmed that responses are determined by a straightforward vote. Occasionally he or the Clerk might draft a letter of response for discussion in relation to the more complex or more significant applications.
- 5.9 The application under discussion was refused by TMBC officers under their delegated powers. MT commented that in his view, far too many applications are dealt with under delegated powers. Whilst Members have the usual ability

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

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

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

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

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

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

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

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

6. OTHER INFORMATION AND MATERIAL CONSIDERED

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

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

7. WERE THE CODES OF CONDUCT ENGAGED?

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

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

8. CONSIDERATIONS

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

7. CONCLUSIONS

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

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

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

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

and
 - (ii) the obligation set out at Paragraph 1 of the BGPC Code as to 'Member Obligations', which requires members to:

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

8. COMMENTS ON THE DRAFT REPORT

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

9. ACKNOWLEDGEMENT

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

Richard Lingard
13 October 2015

APPENDICES

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



www.tmbc.gov.uk

CHIEF EXECUTIVE	
PASS TO	FOR IN FOR AG
9 MAR 2015	
COPY SENT TO	
COPY TO BE SENT TO	
ACKNOWLEDGED	YES/NO

Code of Conduct- Complaint Form

Your Details

1. Please provide us with your name and contact details.

Title:	MISTER
First name:	BARRY
Last name:	HUGHES
Address:	11, HARRISON ROAD BOROUGH GREEN, KENT, TN15 8RU
Daytime telephone:	[REDACTED]
Evening telephone:	[REDACTED]
Mobile telephone:	—
Email address:	—

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- Member of Parliament
- Local authority Monitoring Officer
- Other council officer or authority employee
- Other (please give details) _____

3. Please provide us with the name of the councillor(s) you believe has breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name
MR	MICHAEL	TAYLOR	TONBRIDGE & MALLING (Be)
			BOROUGH GREEN PARISH COUNCIL

4. Please explain in this section what the councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one councillor you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when he (acting in consultation with the Independent Person(s) and Chairman/ Vice-Chairman of the Joint Standards Committee) decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the councillor has conducted himself in a manner which could reasonably be regarded as bringing his office or the Authority into disrepute you, you should state what it was they said or did.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

AN ATTEMPT TO BRING ME, THE BOROUGH COUNCIL
AND THE WHOLE PLANNING PROCESS INTO DIS-
REPUTE BY INNUEUDO AND INTERFERENCE WITHOUT
ANY SHRED OF EVIDENCE,
(SEE COPY LETTER ATTACHED)

[Redacted box]

5. Only complete this next section if you are requesting that your identity is kept confidential. Please see the notes in the accompanying leaflet "How to make a complaint".

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

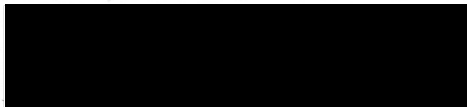
[Redacted box]

Additional Help

6. Complaints must be submitted in writing. This includes fax and electronic submissions. If you need any support in completing this form, please let us know as soon as possible.

This council is under a duty to protect the public funds it administers and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes. See www.tmbc.gov.uk/DPNotice for further information.

Signed:



Date:

6th March 2015

Return Address: monitoring.officer@tmbc.gov.uk

Or by post: The Monitoring Officer
Tonbridge and Malling Borough Council
Gibson Building, Gibson Drive
Kings Hill
West Malling
Kent ME19 4LZ



TONBRIDGE & MALLING

Cllr Mike Taylor
Borough Councillor for Borough Green & Longmill

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

Planning Inspectorate
Bristol

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

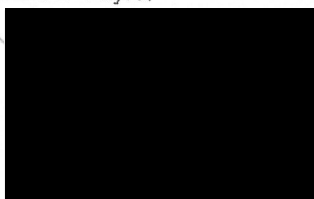
Dear Sir,

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

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

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

Yours Sincerely
Mike Taylor



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

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

BOROUGH COUNCIL

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

5 December 2014

Lynn Francis - RE: Henry Simmonds/ 13 Harrison Road

From: Adrian Stanfield
To: Mike Taylor
Date: 09/12/2014 08:45
Subject: RE: Henry Simmonds/ 13 Harrison Road
CC: Allan Sullivan; Andy Allison; Anita Oakley; Ann Kemp; Anne Moloney; ...

Dear Mike

Thank you for your email.

I don't wish to enter into prolonged exchanges about this issue, but there are a small number of points I feel obliged to make in response to your email.

Firstly, on the subject of predetermination, there is nothing in law that provides that predetermination cannot arise *before* the submission of an application. It is perfectly possible for evidence to be adduced of statements/conduct of a Member before an application for planning permission is submitted, which indicates a predetermined position. That is not surprising - say for example a Member had made public statements to the effect of 'over my dead body will a betting shop open in this area' and then an application is submitted by Coral. The statements made by that member would be very persuasive evidence of a predetermined view.

There are of course no planning rules that prevent you from talking to your residents. That was not the point I was seeking to make - my concern arose from the fact that you allowed yourself to be photographed behind a banner stating 'Shame on Sainsbury's'. That is quite a different matter. As I said however, ultimately it is a matter for you whether you participate in the 2 items on the area 2 agenda relating to Sainsbury's/ the Henry Simmonds. I was clear in my email that my comments were offered as advice only.

Turning to the planning issues, it is incorrect to say that the GPDO is a 'loophole'. It is national legislation, and a conscious move by Parliament to enable changes of use and other development to take place without the need to seek permission from the Council as Local Planning Authority. The particular provision allowing a change of use from A4 to A1 is one of a number of changes of use permitted by the GPDO, which give effect to Government policy intended to streamline the planning process. It was not designed simply to allow for changes of use within failing pubs as you suggest.

Finally, in respect of 13 Harrison Road, I must again reject any allegations or inferences of unfair influence, regardless of where or from whom these might originate. There is no simply evidence to support these allegations. As you know each case is assessed on its planning merits by the case officer, as indeed it would be by a Planning Inspector. I am aware that Steve Humphrey and Lindsay Pearson have appropriate measures in place within the planning department to ensure that each case is properly considered according to the relevant legal and planning tests; there would have been no reason for me to intervene in this case.

Regards

Adrian

>>> Mike Taylor <mike.truck@btconnect.com> 03 December 2014 12:49 >>>

Dear Adrian,

I have been expecting this letter for some time.

(1) Your highlighted paragraph, when read in context, is clearly a typo, and I have inserted the crucial "not" below. Remember I am a truck driver, not a University graduate.

although I did advise on the drafting to ensure it did *not* become a petition with the inherent bias'

I was aware that petitions are seen as biased, and I wanted to ensure that the consultation the residents and traders wanted to run was worded in a balanced way that did not include that sort of bias, and indeed even re-arranged the wording and layout to favour Sainsbury's position. The consultation was passed to me as Chairman of the PC, because residents wanted their voice heard, and that is my job, to pass on resident's views in the planning process.

(2) I do believe that an Article 4 direction should be made - an application of this importance should be tested by the planning process, and not allowed through on a loophole. the GPDO 95/05 was designed to allow expedient repurposing of failing pubs, not to provide exploitation points for large corporations. The Article 4 direction is precisely designed for this situation. That is not me showing bias, it is me wanting the proper planning process observed, with all the impacts being assessed.

(3) Those comments were made before we were advised that an application had been submitted, we were served with the application on the day of our PC meeting 3rd November, so I cannot have pre-determined the application, because it had not been submitted.

(4) Again, this was before we were aware of any application. Furthermore, I was unaware that planning rules prevented me from visiting my High St and talking to my residents.

As you quite rightly quote the law, pre-disposition is not illegal, and I freely admit to a pre-disposition against the constant attacks against my village, and my ward, by developers, who are assisted in their endeavours by the failure of the planning department to abide by their own rules. However, I cannot pre-judge the application until I have heard the full evidence from Sainsbury at the hearing, and it may well be that in their evidence at that hearing they demonstrate that they have listened carefully to resident's concerns and will address them to ensure there development only has a minimal impact. I am still open to persuasion either way, but the outcome depends on the case Sainsbury make on the 10th.

Regarding 13 Harrison Rd- I responded to your "junior officer" Julian, because he was the officer who wrote to me - and I did not impugn his character. I did not make a direct accusation, but passed on assumptions that I have heard made. And quite frankly, if the applicant chose to take that course in the appeal, TMBC would have a very hard time proving that this one-off aberration from its habitual policy of passing these overbearing extensions was not as a result of unfair influence. I am very surprised that you personally did not intervene so those sort of accusations could not be made. It is intriguing why the second application was refused after officers advised the applicant how to respond to the initial concerns.

I view your letter as just another (failed) attempt to browbeat me into silence, and I am surprised that one of your superior intellect has not yet realised that I do not back down in the face of threats, as the current Standards Complaint rumbling through the system clearly demonstrates.

It is absolutely pointless to have a planning system and an LDF if the Officers, with your support, continuously manipulate the system according to some unknown and possibly political agenda. It also surprises me that so close to an election, with the dominant party in such a parlous and beleaguered state, the Executive seems hell bent on alienating the entire population of Borough Green and Longmill, and its surrounding catchment area, with this continuous support of unacceptable development.

I will appeal to Members' consciences to at least allow the people of Borough Green a fighting chance by supporting an Article 4 direction, so Sainsbury have to prove their case.

Regards

Mike

Lynn Francis - Fwd: 14.01564 14/02798 13 Harrison Rd in confidence

From: Lindsay Pearson
To: Adrian Stanfield; Steve Humphrey
Date: 02/12/2014 15:52
Subject: Fwd: 14.01564 14/02798 13 Harrison Rd in confidence
CC: Julian Moat; Marion Geary

Adrian/Steve,

this type of correspondence is quite inappropriate and becoming intolerable

may I have some comments as to who/how a response should be made

Lindsay

Lindsay John Pearson
Chief Planning Officer
Tonbridge and Malling Borough Council
tel: 01732 876237
fax: 01732 876363
website - www.tmbc.gov.uk

Have you tried contacting us at:
www.tmbc.gov.uk/do-it-online ?

>>> Mike Taylor <mike.truck@btconnect.com> 02/12/2014 15:32 >>>

Dear Julian,

After many years of objecting to ever larger and more overbearing extension and development applications and watching them get rubber-stamped by planners whatever the PC and the public might say, I was most surprised to find one had actually been refused on exactly the same grounds we have oft repeated, and with just one single neighbour objection.

I trust this is the beginning of a glorious new era when the planning department actually begins listening to the Parish Council, but cynics have already assured me that this is a one-off generated by the fact that the complaining neighbour appears to be an ex TMBC Leader, Mayor, and long serving member of both T&MBC and the Parish Council. But I reassured them saying I cannot believe that in this age of transparency such "old boy" networks still exist.

It will be interesting to see how the appeal turns out, will TMBC have costs awarded against them ?

Regards
Mike

Annex L

Lynn Francis - Standards Complaint #3

From: Mike Taylor <mike.truck@btconnect.com>
To: 'Lynn Francis' <Lynn.Francis@tmbc.gov.uk>, Adrian Stanfield <Adrian.Stan...>
Date: 14/03/2015 11:08
Subject: Standards Complaint #3
CC: <tim@timshaw.wanadoo.co.uk>, 'cliff dobson' <frogskwod@hotmail.com>, 'ga...

Dear Ms Francis

Feel free to proceed with yet another Standards complaint.

My only comment is that I have made no accusation or inference, but as an elected representative merely passed on concerns raised to me. Even then, I have merely noted the conclusions a reasonable person might draw from the sparse evidence available.

I do not propose to waste any more of my time getting involved with "independent persons" or internal discussions, - should the Monitoring Officer deem it appropriate to convene a Standards Committee, I will attend at that point.

Mike Taylor
Chairman, Borough Green Parish Council
Ward Member, Borough Green & Longmill.

Lynn Francis - RE: Standards Complaint #3

From: Mike Taylor <mike.truck@btconnect.com>
To: 'Steve Perry' <steve.perry@chronus.co.uk>
Date: 16/03/2015 09:38
Subject: RE: Standards Complaint #3
CC: 'Lynn Francis' <Lynn.Francis@tmbc.gov.uk>, 'Adrian Stanfield' <Adrian.St...>
Attachments: bh8.pdf

Hi Steve,

I do apologise - this refers to a standards complaint lodged by Barry Hughes, referring to the letter I sent to the Planning Inspectorate regarding 13 Harrison road, as read and discussed at the last PC meeting, and circulated, noting that it was in fact sent in a personal capacity. I think the complaint is spurious, because I am merely passing on concerns raised to me by residents, nowhere do I personally endorse the view that undue influence had taken place, merely that "a reasonable person might draw that conclusion".

TMBC sent the complaint in hardcopy, so I have scanned it to circulate for the benefit of the transparency we are used to at BGPC. I keep getting the impression that TM think they can bully us into silence with these complaints.

Regards, and thanks for the thoughts
 Mike

From: Steve Perry [mailto:steve.perry@chronus.co.uk]
Sent: 16 March 2015 09:00
To: Mike Taylor
Cc: Lynn Francis; Adrian Stanfield; <tim@timshaw.wanadoo.co.uk>; cliff dobson; gary harrington; Hazel Damiral; <henrybnl@btinternet.com>; les chown; <michealyianni@btinternet.com>; sandra gould; scott millener; Tim Shaw
Subject: Re: Standards Complaint #3

Mike

I note that you have copied the email below to all Borough Green Parish Councillors.

As far as I am aware, we have not been made aware of the circumstances triggering such a response from yourself, for what appears to be a repetition of a scenario involving your personal relationship with TMBC.

Obviously, any inference of endorsement by BGPC needs to be removed swiftly.

Regards
 Steve

On 14 Mar 2015, at 11:07, Mike Taylor <mike.truck@btconnect.com> wrote:

Dear Ms Francis

Feel free to proceed with yet another Standards complaint.

My only comment is that I have made no accusation or inference, but as an elected representative merely passed on concerns raised to me. Even then, I have merely noted the conclusions a reasonable person might draw from the sparse evidence available.

I do not propose to waste any more of my time getting involved with "independent persons" or internal discussions, - should the Monitoring Officer deem it appropriate to convene a Standards Committee, I will attend at that point.

Mike Taylor
 Chairman, Borough Green Parish Council
 Ward Member, Borough Green & Longmill.

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NALC code of conduct for parish councils

as amended and adopted by Borough Green Parish Council 04 March 2013

Introduction

Pursuant to section 27 of the Localism Act 2011, Borough Green Parish Council ('the Council') has adopted this Code of Conduct to promote and maintain high standards of behaviour by its members and co-opted members whenever they conduct the business of the Council, including the business of the office to which they were elected or appointed, or when they claim to act or give the impression of acting as a representative of the Council.

This Code of Conduct is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

Definitions

For the purposes of this Code, a 'co-opted member' is a person who is not a member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council, and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

For the purposes of this Code, a 'meeting' is a meeting of the Council, any of its committees, sub-committees, joint committees or joint sub-committees.

For the purposes of this Code, and unless otherwise expressed, a reference to a member of the Council includes a co-opted member of the Council.

Member obligations

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations.

1. He/she shall behave in such a way that a reasonable person would regard as respectful.
2. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.
3. He/she shall not seek to improperly confer an advantage or disadvantage on any person.
4. He/she shall use the resources of the Council in accordance with its requirements.
5. He/she shall not disclose information which is confidential or where disclosure is prohibited by law.

Registration of interests

6. Within 28 days of this Code being adopted by the Council, or the member's election or the co-opted member's appointment (where that is later), he/she shall register with the Monitoring Officer the interests which fall within the categories set out in Appendices A and B.
7. Upon the re-election of a member or the re-appointment of a co-opted member, he/she shall within 28 days re-register with the Monitoring Officer any interests in Appendices A and B.

8. A member shall register with the Monitoring Officer any change to interests or new interests in Appendices A and B within 28 days of becoming aware of it.
9. A member need only declare the existence but not the details of any interest which the Monitoring Officer agrees is a 'sensitive interest'. A sensitive interest is one which, if disclosed on a public register, could lead the member or a person connected with the member to be subject to violence or intimidation.

Declaration of interests at meetings

9. Where a matter arises at a meeting which relates to an interest in Appendix A the member shall not participate in a discussion or vote on the matter. He/she only has to declare what his/her interest is if it is not already entered in the member's register of interests or if he/she has not notified the Monitoring Officer of it.
10. Where a matter arises at a meeting which relates to an interest in Appendix A which is a sensitive interest, the member shall not participate in a discussion or vote on the matter. If it is a sensitive interest which has not already been disclosed to the Monitoring Officer, the member shall disclose he/she has an interest but not the nature of it.
11. Where a matter arises at a meeting which relates to an interest in Appendix B, the member shall not vote on the matter. He/she may speak on the matter only if members of the public are also allowed to speak at the meeting.
12. A member only has to declare his/her interest in Appendix B if it is not already entered in his/her register of interests or he/she has not notified the Monitoring Officer of it or if he/she speaks on the matter. If he/she holds an interest in Appendix B which is a sensitive interest not already disclosed to the Monitoring Officer, he/she shall declare the interest but not the nature of the interest.

13. Where a matter arises at a meeting which relates to a financial interest of a friend, relative or close associate (other than an interest in Appendix A), the member shall disclose the nature of the interest and not vote on the matter. He/she may speak on the matter only if members of the public are also allowed to speak at the meeting. If it is a 'sensitive interest' the member shall declare the interest but not the nature of the interest.

Dispensations

14. On a written request made to the Council's proper officer, the Council may grant a member a dispensation to participate in a discussion and vote on a matter at a meeting even if he/she has an interest in Appendices A and B if the Council believes that the number of members otherwise prohibited from taking part in the meeting would impede the transaction of the business; or it is in the interests of the inhabitants in the Council's area to allow the member to take part or it is otherwise appropriate to grant a dispensation.

Standards regime

15. Members agree to the Tonbridge & Malling Standards Regime

Appendix A

Interests defined by regulations made under section 30(3) of the Localism Act 2011 and described in the table below.

Subject	Description
Employment, office, trade, profession or vocation	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 Council) made to the member during the 12 month period ending on the latest date referred to in paragraph 6 above for expenses incurred by him/her in carrying out his/her duties as a member, or towards his/her election expenses.
	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 made between the member or between his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners (or a body in which such a person is a partner in a firm, a director of an incorporated body or holds the beneficial interest in securities*) and the Council —
	(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 Council.
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 the member's knowledge)—
	(a) the landlord is the Council; and
	(b) the tenant is a body in which the member, or his/her spouse or civil partner/ the person with whom the member is living as if they were spouses/civil partners has a beneficial interest.
Securities	Any beneficial interest in securities of a body where—
	(a) that body (to the member's knowledge) has a place of business or land in the area of the Council; 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.

*"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.

Appendix B

An interest which relates to or is likely to affect:

<p>(i) any body of which the member is in a position of general control or management and to which he/she is appointed or nominated by the Council;</p>	
<p>(ii) any body—</p> <ul style="list-style-type: none"> (a) exercising functions of a public nature; (b) directed to charitable purposes; or (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) <p>of which the member of the Council is a member or in a position of general control or management;</p>	
<p>(iii) any gifts or hospitality worth more than an estimated value of £50 which the member has received by virtue of his or her office.</p>	
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BOROUGH GREEN PARISH COUNCIL

DECLARATION OF ACCEPTANCE OF OFFICE

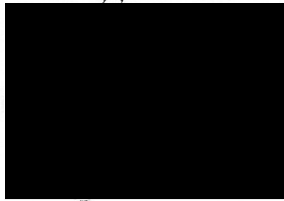
FRANK MICHAEL TAYLOR

having been elected Chairman of BOROUGH GREEN PARISH COUNCIL,

declare that I will duly and faithfully fulfil the requirements of this role according to the best of my judgement and ability.

I undertake to observe the code as to the conduct which is expected of members/co-opted members of BOROUGH GREEN PARISH COUNCIL.

Signed:



Date: 6. MAY 2014.

This undertaking was made and signed before me



Proper Officer of Borough Green Parish Council

Declaration of Acceptance of Office

I⁽¹⁾, FRANCIS MICHAEL TAYLOR

having been elected to the office of⁽²⁾ COUNCILLOR

of the Tonbridge and Malling Borough Council

Declare that I take that office upon myself, and will duly and faithfully fulfil the duties of it according to the best of my judgment and ability.

Date: 9th JANUARY 2013¹⁴



(Signature)

This declaration was made and subscribed before [me] [us]



.....
⁽³⁾[Member(s)] [Proper Officer] of the Council

(1) Insert name of person making the declaration

(2) Insert description of office

(3) If the declaration is made and subscribed before any other person authorised by section 83(3) of the Local Government Act 1972, adapt accordingly.

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

1. Context

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

2. Interpretation

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

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

3. Appointment of Independent Person

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

4. Making a complaint

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

5. Criminal conduct

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

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

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

6. Anonymous complaints

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

7. Role of Independent Person

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

8. Preliminary tests

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

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

9. Informal resolution

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

10. Investigation

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

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

11. Hearing

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

12. Sanctions

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

13. Appeal

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

14. Revision of these Arrangements

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

Kent Code of Conduct for Members

Preamble

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

THE CODE

1. Interpretation

In this Code:

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

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

“Authority” means Tonbridge and Malling Borough Council

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

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

“Code” means this Code of Conduct.

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

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

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

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

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

“Meeting” means any meeting of:

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

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

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

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

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

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

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

Scope

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

General obligations

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

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

- (2) You must not:

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

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

Registering Disclosable Pecuniary Interests

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

Declaring Interests

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

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

Sensitive Interests

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

Gifts and Hospitality

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

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

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

Dispensations

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

ANNEX 1**THE SEVEN PRINCIPLES OF PUBLIC LIFE**

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

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

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

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

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

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

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

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

ANNEX 2**Disclosable Pecuniary Interests, as prescribed by regulations, are as follows:**

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

“the Act” means the Localism Act 2011

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

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

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

“M” means a member of the relevant authority

“member” includes a co-opted member

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

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

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

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

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

	Relations (Consolidation) Act 1992.
Contracts	<p>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:</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
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	<p>Any tenancy where (to M's knowledge):</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where:</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(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.</p>

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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