

TONBRIDGE AND MALLING BOROUGH COUNCIL

STANDARDS HEARING PANEL

Monday, 12th June, 2017

Present: Cllr D A S Davis (Chairman), Cllr Mrs P A Bates, Cllr D J Cure, Prof M McKinlay (Parish Council Representative), Mr W E Stead (Parish Council Representative), Mr D Thornewell (Parish Council Representative) and Mr D S Ashton (Independent Person)

PART 1 – PUBLIC

SHS 17/1 DECLARATIONS OF INTEREST

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

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

SHS 17/2 THE HEARING PANEL TO DETERMINE WHETHER THE CONFIDENTIAL REPORT MAY BE CONSIDERED IN PUBLIC

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

RESOLVED: That the allegation that a Member of Borough Green Parish Council and two Members of Wrotham Parish Council had breached the Code of Conduct of those bodies be considered in public.

SHS 17/3 CODE OF CONDUCT COMPLAINT AGAINST THREE PARISH COUNCILLORS

The Hearing Panel of the Joint Standards Committee gave consideration to an allegation that Councillor Mike Taylor had breached the Code of Conduct of Borough Green Parish Council and that Councillors Robin Betts and Harry Rayner had breached the Code of Conduct of Wrotham Parish Council.

The Panel received the report of the independent external investigator (Investigating Officer), Mr Richard Lingard, Solicitor, who had been appointed to carry out the investigation into the allegation. The report, dated 17 October 2016, contained details of the relevant legislation and protocols, evidence gathered, witness statements and the Subject Members' response to the complaint. In addition to the Investigating Officer's report the Panel agreed to accept and have regard to a written Statement made by Councillor Rayner on 2 June 2017 and a Character

Reference for Councillor Betts submitted at the commencement of to the Hearing.

The Investigating Officer made an oral presentation to the Panel regarding the complaint made by Mrs Sheila Smith, Chairman of Governors at Wrotham School, about the conduct of Councillor Taylor of Borough Green Parish Council and of Councillors Betts and Rayner of Wrotham Parish Council while at Wrotham School on Friday 4th March, 2016. The report concluded that there had been a breach of the Codes of Conduct of the two parish councils.

The Investigating Officer was cross examined at length by Mr Peter Oldham, Counsel for Councillor Rayner with regard to the incident on 4 March 2016 and in respect of Councillor Rayner's email of 9 March 2016. Mr Lingard responded to a number of questions from Councillor Betts regarding the scope and process of the investigation with particular reference to the lack of CCTV footage to support the evidence given by the parties involved in the complaint. Councillor Taylor stated that he had no questions to put to Mr Lingard.

Mr Oldham presented the Statement made by Councillor Rayner on 2 June 2017 and Councillor Rayner responded to the questions put to him by the Investigating Officer and Members of the Panel. Councillor Taylor did not present any further evidence but stated his belief that the school was 'covering up' financial irregularity. No questions were put to Councillor Taylor. Councillor Betts gave a detailed statement on the reason for his presence at the school and responded to the questions put by Members of the Panel regarding the events prior to and on 4 March 2016.

The Panel heard the views of the Independent Person, Mr David Ashton, and sought clarification from the Monitoring Officer regarding the inclusion of Councillor Rayner's email of 9 March 2016 within the complaint. It was subsequently confirmed that the scope of the investigation excluded anything which did not occur on 4 March 2016.

The Panel had regard to all the evidence including the Investigating Officer's report and the evidence given by the Subject Members, both written and oral, and having taken into account the views of the Independent Person, came to the following decision in respect of whether the Subject Members breached the code by acting in a way that the reasonable person would not find respectful and/or whether by acting in a way which the reasonable person would find to be bullying and intimidation.

The Panel considered the Subject Members' perception of financial matters in relation to the Community Use Agreement had been useful background and contextual information only. However, the Panel felt that it was clear that the Subject Members went to the school in good

faith on the basis of that financial stress and that this had applied pressure to the whole of the activities that afternoon.

In respect of what happened in the school reception that Panel found that, without CCTV and live witness evidence, it had not been satisfied on the balance of probabilities that any of the Subject Members had acted in a disrespectful or bullying manner in their dealings with the school staff in the school reception.

However, in relation to what occurred outside the school reception, the Panel found that, by reason of his acts or his failure to act when he became aware that he was in fact blocking Mr Wright's car, Councillor Taylor did obstruct Mr Wright's car with his van and that this was not behaviour which the reasonable person would find respectful.

The Panel, therefore, found that Councillor Taylor had breached the Code of Conduct of Borough Green Parish Council. The Panel found no breach of the Code of Conduct of Wrotham Parish Council on the parts of Councillors Betts and Rayner.

Having found that there had been a breach of the Code of Conduct the adopted arrangements for dealing with complaints required that the Panel heard representations from the Monitoring Officer and the Independent Person on whether there should be any sanctions imposed. The Panel was advised that the Council's adopted arrangements for dealing with Hearings contained the range of possible sanctions which the Panel could make and noted that it was not entitled to apply or recommend any other sanctions. In coming to its conclusions on the sanctions the Panel again had regard to the legal advice provided and were mindful of the need to impose reasonable and proportionate sanctions. Additionally, the Panel had regard to the following factors:

- the fact that Councillor Taylor intended, by failing to move his van, that Mr Wright's car would be blocked in.
- the impact on Mr Wright was that he was seriously inconvenienced and consequently became agitated.
- the fact that Councillor Taylor does not accept fault for this breach and no apology has been given to anyone.
- the fact that Councillor Taylor has previously breached the Code of Conduct of Borough Green Parish Council.

For the avoidance of doubt the Panel stated that it had not taken into account the outstanding complaint against Councillor Taylor referred to by Counsel to the Monitoring Officer regarding factors to be taken into account on the application of sanctions.

The Hearing Panel therefore

RESOLVED: That

1. The Panel's findings be reported to Borough Green Parish Council and the Parish Council be invited to issue Councillor Taylor with a formal censure for obstructing the headmaster.
2. A formal letter be sent to Councillor Taylor on behalf of the Hearing Panel.
3. The Panel's findings be published as follows
 - by publication on the TMBC website;
 - by email to the local Press;
 - by email to the Clerk and all members of Borough Green Parish Council.

The meeting commenced at 10.00 am and
was adjourned at 4.07 pm on 12 June 2017.

The meeting ended at 12.30 pm having reconvened
at 10.30 am on 13 June 2017