

TONBRIDGE & MALLING BOROUGH COUNCIL

RECORD OF DECISION

Decision Taken By: Standards Hearing Panel

Decision No:

D230001SHP

Date: 08 December 2023

Decision(s) and Reason(s)

Code of Conduct Complaint against a Borough Councillor

On 8 December 2023, the Hearing Panel of the Tonbridge and Malling Borough Council considered a report of an investigation into the alleged conduct of Tonbridge & Malling Borough Councillor Mark Hood (the "Subject Member"). The investigation was conducted by Mr Richard Lingard LLB, an investigator appointed by the Monitoring Officer.

A general summary of the complaint is set out below.

1. Complaint Summary

1.1 On 6 June 2023 the Monitoring Officer received a complaint from Cllr Matt Boughton, Leader of Tonbridge & Malling Borough Council about the conduct of Cllr Mark Hood, Leader of the Green group.

1.2 The allegations within the complaint relate to posts made in the name of the Tonbridge & Malling Green Party and the Judd Ward Green Party on 1 April and 5 April 2023 respectively. The latter of these posts took the form of a 'Personal Statement by Cllr Mark Hood'.

1.3 The complaint alleges that these posts included details of a private and confidential workshop held at Tonbridge & Malling Borough Council offices on 13 March 2023.

1.4 It was alleged that Cllr Hood had breached paragraph 3(2)(d) of the Code of Conduct, which provides that Members must not disclose information given to them in confidence. The full text of paragraph 3(2)(d) is set out below:-

(2) you must not

...(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*

2. Application of Schedule 12A Local Government Act 1972

- 2.1 The complaint and Investigating Officer's Report were presented to the Panel in private papers, as the information presented consisted of information relating to an individual / information which is likely to reveal the identity of an individual (paragraphs 1 and 2 of Schedule 12A).
- 2.2 The Panel was invited to consider whether the public interest in maintaining the exemption – and therefore holding the hearing in private - outweighed the public interest in having the matter heard in public.
- 2.3 The Monitoring Officer submitted that in most cases the public interest in transparent decision making by the Hearing Panel will outweigh the subject member's interest in limiting publication of an unproven allegation that has yet to be determined. There is a legitimate public interest in ensuring that elected members uphold the highest standards of conduct expected under their Codes of Conduct.
- 2.4 The Monitoring Officer did acknowledge there was risk of further confidential information contained in the report being released if the matter were to be heard in public. Moreover, there were other associated outstanding complaints, of which the investigation could be prejudiced if the hearing were to be held in public.
- 2.5 Cllr Hood submitted that the hearing should be held in public on the grounds that it would be in the public interest to do so. He contended that no further information relating to the workshop would be disclosed by holding the hearing in public.
- 2.6 In light of the representations made, the Panel considered that it was important that the confidentiality of the ongoing consultant work in respect of the asset review of the Tonbridge Town Centre was maintained and the investigation of the other associated outstanding complaints was not prejudiced, the public interest in maintaining the exemption should prevail and the matter should be heard in private. However, the Panel agreed that the Monitoring Officer be asked to consider whether the recordings of the hearing and the confidential report could be released to the public at a later date once the consultancy report and the other associated outstanding complaints had been resolved.

3. Consultation with Independent Person

- 3.1 The Independent Person (IP) made written submissions to the Panel.

3.2 On the issue of whether or not there had been a breach of the Code by Cllr Hood, the view of the IP was that there had been a breach. He concurred with paragraph 8.10 of the investigator's report, in particular his finding that the timing of a direction of confidentiality is irrelevant if it still occurs within a relevant meeting or event. In the view of the IP, it was clear that, at least on some level, and by all accounts, Cllr Boughton provided such a direction or request during the workshop. Coupled with the wording of the briefing note, which Cllr Hood received prior to the meeting, the IP agreed that on the balance of probabilities Cllr Hood had breached the Code by virtue of disclosing information he was either aware or ought to have been reasonably aware was confidential.

4. Findings

4.1 The Panel received the report of the external independent investigator (Investigating Officer), Mr R Lingard of Richard Lingard LLB, who had been appointed to carry out the investigation into the allegation. The report, dated 7 September 2023, contained details of the relevant legislation and protocols, evidence gathered and witness statements and was presented by Mr R Lingard.

4.2 The Investigating Officer's report found that, on the balance of probabilities, Cllr Hood had breached paragraph 3 (2) (d) of the Tonbridge & Malling Borough Council Code of Conduct.

4.3 The Panel had regard to all the evidence, including the Investigating Officer's report and the evidence given by Cllr Hood, and having taken into account the views of the Independent Person, concluded, on the balance of probabilities on the evidence presented to it, that in relation to paragraph 3 (2) (d):

4.3.1 the nature of the consultant workshop in question was confidential; and

4.3.2 Cllr Hood had disclosed information acquired from the confidential workshop to the public on social media.

4.4 The Panel therefore found that Cllr Hood had breached the Tonbridge & Malling Borough Council Code of Conduct.

5. Sanctions Applied

5.1 The Panel received and had regard to a further written statement of the Independent Person in relation to sanctions. In coming to its conclusions on the sanctions the Panel again had regard to the legal advice provided and was mindful of the need to impose reasonable and proportionate sanctions. Additionally the Panel had regard to the following factors:

5.1.1 Cllr Hood had sought advice from the Monitoring Officer before disclosing the confidential information on social media. He was therefore aware that disclosure of the information would be likely to

constitute a breach of the Code of Conduct;

5.1.2 Cllr Hood could not confirm that the incident would not be repeated in the future;

5.1.3 No apology had been given by Cllr Hood to any affected persons; and

5.1.4 Cllr Hood had not previously breached the Borough Council Code of Conduct.

5.2 The Hearing Panel therefore resolved that the following sanction be imposed:

5.2.1 the Panel's Findings be reported to the Full Council at its next ordinary meeting.

5.3 The Panel further recommended that consideration be given to the format of the workshops/informal meetings of such nature in the future, with particular reference made to notes and guidance provided for Members.

6. Appeal

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

7. Notification of Decision

7.1 This decision is sent to:

- Subject Member (Cllr Hood)
- Complainant (Cllr Boughton)

Reasons: As presented to the Standards Hearing Panel on 8 December 2023

Signed Chairman of
Standards Hearing Panel:

D Davis

Date of publication:

12 February 2024