

TONBRIDGE AND MALLING BOROUGH COUNCIL

STANDARDS HEARING PANEL

Friday, 8th December, 2023

Present: Cllr D A S Davis (Chair), Cllr Mrs S Bell (Vice-Chair), Cllr Mrs T Dean, Cllr R V Roud, Mark Williams (East Peckham Parish Council) and Cllr P M Hickmott (substitute).

SHS 23/1 ELECTION OF CHAIR

RESOLVED: That Councillor D Davis be elected as the Chairman for this meeting of the Standards Hearing Panel.

SHS 23/2 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor A Bennison and Mr D Mercier (Independent Person).

Notification of substitute members were recorded as set out below:

- Councillor P Hickmott substituted for Councillor A Bennison

In accordance with Council Procedure Rules 17.5 to 17.9 this councillor had the same rights as the ordinary member of the panel for whom they were substituting.

SHS 23/3 DECLARATIONS OF INTEREST

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

DECISIONS TAKEN UNDER DELEGATED POWERS

SHS 23/4 CONSIDERATION OF MATTERS IN PUBLIC

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.

The Monitoring Officer submitted that in most cases the public interest in transparent decision making by the Hearing Panel would outweigh the subject member's interest in limiting publication of an unproven allegation that had yet to be determined. There was a legitimate public interest in ensuring that elected members upheld the highest standards of conduct expected under their Codes of Conduct.

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.

Councillor M Hood (the 'Subject Member') 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.

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.

RESOLVED: That the Hearing be carried out in private, pursuant to paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972.

MATTERS FOR CONSIDERATION IN PRIVATE

SHS 23/5 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

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

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS

SHS 23/6 CODE OF CONDUCT COMPLAINT AGAINST A BOROUGH COUNCILLOR

The Hearing Panel of the Joint Standards Committee gave consideration to an allegation that a borough councillor had breached the Tonbridge & Malling Borough Council Code of Conduct. The Panel was asked to consider whether Councillor M Hood (the 'Subject Member') had breached the provisions of the Code of Conduct in relation to the following Member Obligation:

Paragraph 3 General obligations

(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*

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

In addition to the Investigating Officer's report, the Panel received and had regard to a written statement submitted by the Independent Person, Mr D Mercier, who concurred with paragraph 8.10 of the Investigating Officer's report, in particular his finding that the timing of a direction of confidentiality was irrelevant if it still occurred within a relevant meeting or event. In the view of the Independent Person, it was clear that, at least on some level, and by all accounts, Councillor M Boughton (the 'Complainant') provided such a direction or request during the workshop. Coupled with the wording of the briefing note, which the Subject Member received prior to the meeting, the Independent Person agreed that, on the balance of probabilities, the Subject Member had breached the Code by virtue of disclosing information that he was either aware or ought to have been reasonably aware was confidential.

The Panel had regard to all the evidence, including the Investigating Officer's report and the evidence given by the Subject Member, 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):

- (1) the nature of the consultant workshop in question was confidential; and
- (2) the Subject Member had disclosed information acquired from the confidential workshop to the public on social media.

The Panel therefore found that the Subject Member had breached the Tonbridge & Malling Borough Council Code of Conduct.

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 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:

- (1) the Subject Member 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;
- (2) the Subject Member could not confirm that the incident would not be repeated in the future;
- (3) no apology had been given by the Subject Member to any affected persons; and
- (4) the Subject Member had not previously breached the Borough Council Code of Conduct.

The Hearing Panel therefore

RESOLVED: That the following sanction be imposed:

- (1) the Panel's Findings be reported to the Full Council at its next ordinary meeting.

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.

The meeting ended at 2.15 pm
having commenced at 10.00 am