

TONBRIDGE & MALLING BOROUGH COUNCIL
HEARING PANEL OF THE JOINT STANDARDS COMMITTEE

12 October 2015

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 Wilkin Chapman Goolden Solicitors LLP in respect of allegations that Councillor Mike Taylor has breached the Code of Conduct of Tonbridge and Malling Borough Council

1.1 Introduction

- 1.1.1 On 31 July 2015 the Council convened a Hearing Panel of the Joint Standards Committee to consider the report of Mr Jonathan Goolden, Solicitor, in respect of allegations that Cllr Mike Taylor had breached the code of conduct of Tonbridge & Malling Borough Council.
- 1.1.2 That hearing was adjourned due to the non-availability of one of the witnesses through illness. The original report and its annexes are attached to this report at Annex 1.
- 1.1.3 In the period between that hearing and the reconvened hearing, a number of procedural issues have been raised by the Subject Member and Independent Person which the Panel should be aware of.

Pre-Hearing Matters

- 1.1.4 The Independent Person has raised a number of queries regarding the hearing and pre-hearing process. I have reviewed the numerous points made which are summarised and addressed here:

(a) Is a complaint form required before an allegation can be investigated?

In the present case, Cllr Taylor referred himself for investigation. The arrangements provide that an allegation “must be made in writing and addressed to the Monitoring Officer using the Complaint Form...”

The allegation was made in writing, in detail, and the Monitoring Officer exercised his discretion under paragraph 14 to depart from the requirement that the Complaint Form is to be used, as this was considered expedient in the circumstances, to secure the effective and fair consideration of the matter.

(b) What is the role of the Independent Person (IP) at the hearing?

The Hearing Panel procedure requires that the IP's views must be sought and taken into consideration before the Hearing Panel takes any decision on:

- (i) whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct; and
- (ii) as to any sanction to be taken following a finding of failure to comply with the Code of Conduct

The IP does not sit as part of the Panel, and does not retire with the Panel during their deliberations. Nor does the IP have a vote on the decision to be made.

Paragraph 3.7 of the Hearing Procedure states that at the appropriate point in proceedings, 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.”* (my emphasis)

It is clear therefore that in seeking the IP's views on (i) above, such views must be reached on, and be limited to, the facts presented to the panel (including the investigating officer's report, witness statements and the witnesses' and Subject Member's oral testimony). No extraneous material should be referred to by the IP.

(c) Who is the “investigating officer” for the purposes of the Hearing?

The Council appointed Wilkin Chapman Goolden LLP (“WCG”), a firm of solicitors, to carry out the investigation, and this is clear from the terms of that firm's appointment. Whilst the investigating officer's report was written by Jonathan Goolden, a partner in the firm, the investigations and interviews were carried out by Martin Dolton, a member of that firm.

However, it is right that should the Hearing Panel or Subject Member wish to ask questions of the Investigating Officer, the Investigating Officer presenting the report must have sufficient knowledge of the report and its conclusions.

Mr Goolden is not available for the Hearing (and is unlikely to be available for a considerable time). He has indicated to me by email that Mr Dolton has had *“a significant involvement in every step of the investigation, including the gathering of evidence, the summarising of that evidence... and the formulation*

of the reasoning in the report, he is able to respond ably and fully to any questions which the subject member or the panel may wish to put to the [Investigating] Officer”.

The Panel is therefore requested to consider whether it is expedient, in the interests of securing the effective and fair consideration of the matter, to permit Mr Dolton to appear on behalf of WCG.

(d) Whether the Hearing should be held in public

The details provided in this Report, and in the hearing, would fall under the provisions in Paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972 and therefore constitute “exempt information” for the purposes of that Act. Where “exempt information” is to be discussed, a committee (or in this case the Hearing Panel) may pass a resolution to exclude the press and public from that Hearing.

At paragraph 3.1(f) of the Hearing Panel Procedure, this requires that the Panel will 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.

Cllr Taylor has indicated that he believes the hearing should be conducted in public.

It is, however, for the Panel ultimately to decide whether the Hearing should be public or private and which, if any, documents should be withheld.

Witnesses

- 1.1.5 In an email dated 2nd August, Cllr Taylor, raised a point regarding the calling of witnesses.
- 1.1.6 Paragraph 3.5 of the Hearing Panel Procedure (Annex 4 of the Arrangements) indicates that a Subject Member may call their own witnesses.
- 1.1.7 Cllr Taylor indicated in his email that he wished to call two witnesses, Brian Gates and Kirstie Parr. In an email reply dated 24th August, I indicated that whilst it was open to the Subject Member to call witnesses, as indicated in the Arrangements, they could not be compelled to attend (and the same is true for witnesses of the Investigating Officer). As at the date of this report I am not aware that the Subject Member has contacted those witnesses or whether they have confirmed they will attend the hearing.

Purpose of the Hearing

- 1.1.8 In a further email dated 24 August, the Subject Member appeared to indicate that he intends to produce evidence regarding the historical relationship between himself and the Borough Council and *“why relationships became so strained”*.
- 1.1.9 It should be noted that the purpose of the hearing in the first instance is to decide *as a matter of fact* whether Cllr Taylor is in breach of the code. Any “justification” as to a potential breach is not relevant to that finding of fact. Therefore, Cllr Taylor may only give evidence (including calling witnesses) as to whether or not a breach has occurred; he is not entitled under the Arrangements to call witnesses as to the justification for his behaviour.
- 1.1.10 If a breach is found on the facts, he is then entitled to make representations only as to the *form* of sanctions and at that stage could outline why he acted as he did.

It should also be noted that any finding of the Panel can only relate to Cllr Taylor’s conduct since becoming a member of the Borough Council in January 2014.

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 Recommendations

- 1.3.1 As set out in Paragraph 1.3 of the Report of the Monitoring Officer dated 31 July 2015 attached to this report at Annex 1.

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