

TONBRIDGE & MALLING BOROUGH COUNCIL

JOINT STANDARDS COMMITTEE

15 June 2016

Report of the Monitoring Officer

Part 1- Public

Matters for Information

1 UPDATE – CODE OF CONDUCT COMPLAINTS

1.1 Introduction

1.1.1 This report updates Members on the complaints made to me as Monitoring Officer that a Member may have failed to comply with his/ her authority's Code of Conduct.

1.1.2 In accordance with the arrangements adopted by the Borough Council for dealing with complaints that a councillor has breached their authority's code of conduct, complaints are subject to an initial assessment by me in consultation with the Independent Persons and the Chairman and Vice-Chairmen of the Joint Standards Committee. In advance of that assessment I invite the Councillor against whom the complaint is made to submit their initial views to me so that these may be taken into account in our deliberations.

1.1.3 Our adopted procedure requires that complaints are assessed against the following preliminary criteria –

The legal jurisdiction test - this contains 6 elements, including

- was the person complained of acting in an official capacity at the time of the alleged conduct?

- 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? ;

If a complaint fails one or more of the jurisdiction tests, no further action will be taken and the complaint will be rejected;

The local assessment criteria test - if a complaint passes the legal jurisdiction test, I am then required to apply the local assessment criteria test. There are 12 elements to this test, including

-The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;

-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

If one or more of the local assessment criteria applies to the complaint, no further action will be taken by me and the complaint will be rejected.

A full copy of the adopted arrangements is included at **Annex 1**.

- 1.1.4 If a complaint passes the above tests, the next stage is then to consider whether the complaint merits investigation, or if it is more appropriate for it to be resolved on an informal basis. In certain cases it may also be appropriate to take no action, notwithstanding the fact that a complaint has passed the initial tests.
- 1.1.5 As agreed by this Committee on 19 January 2015, personal details of Complainants or Subject Members are not published unless a complaint leads to investigation and public hearing before the Hearing Panel.

1.2 Complaint 16/2014 – Tonbridge & Malling Borough Council/ Borough Green Parish Council

- 1.2.1 On 9 September 2014, I received a complaint about the conduct of a Member of Tonbridge and Malling Borough Council ("TMBC") and Borough Green Parish Council ("BGPC").
- 1.2.2 The allegation arose from a letter placed on the Complainant's car whilst parked in a public road in Borough Green relating to parking and the ensuing e-mail exchange concerning the letter between the Complainant and the Subject Member. The letter accused the recipient of parking selfishly by blocking a resident's access and requesting the recipient to park responsibly. The correspondence confirmed that whilst the letter was not placed on the Complainant's car personally by the Subject Member that he gave authority for residents "whose lives are made miserable by people parking inconsiderately" to use it. The letter was written on notepaper headed with the Borough Council's crest and was signed by the Subject Member in his capacity as both a Parish Councillor and Borough Councillor.
- 1.2.3 The complaint passed both the legal jurisdictional test and the local assessment criteria. It was agreed that it should proceed to investigation in respect of 2 potential breaches of the Tonbridge and Malling BC Code -

"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;

(2) You must not:..

(f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;.

- 1.2.4 The investigation into this complaint was carried out by external investigators, namely Wilkin Chapman Solicitors LLP. Their report concluded that there had been no breach of the Code of Conduct.
- 1.2.5 The report noted that in applying the Code to the circumstances of an alleged breach of disrepute, it is established that it is not necessary for the member's actions to have actually diminished public confidence, or harmed the reputation of the authority. The test is whether or not the conduct could 'reasonably be regarded' as having these effects. However, the conduct must be sufficient to damage the reputation of the member's office or the Council, not just the reputation of the Councillor as an individual. In the circumstances of this case the report concluded that the conduct did not cross the line into the area of being such that it affected the ability of the Councillor to fulfil his role or damage the reputation of the Council. The report further concluded that, in the circumstances of this case, an objective test of the Councillor's actions resulted in a usage not amounting to an improper use of resources.
- 1.2.6 The report of Wilkin Chapman was considered by the Deputy Monitoring Officer, in consultation with the Chairman and Vice-Chairmen of the Joint Standards Committee, and the Independent Persons. Having considered the report in detail, and the conclusion that the Subject Member did not breach the Code of Conduct, it was agreed that, save for an information report to the Joint Standards Committee in due course, no further action would be taken in respect of this complaint.

1.3 Complaint 15/2014 – Tonbridge & Malling Borough Council

- 1.3.1 On 12 October 2015 the Standards Hearing Panel met to determine an allegation that Councillor Mike Taylor had breached the Code of Conduct of Tonbridge and Malling Borough Council.
- 1.3.2 The allegation giving rise to the investigation and hearing in this case had been self-referred by Councillor Taylor. On 8 July 2014 Councillor Taylor had referred himself to the Monitoring Officer as it appeared to him that others considered his conduct to be in breach of the Council's Code of Conduct. This referral had taken place after a meeting with the Chief Executive and the Monitoring Officer, in which concern was expressed by them about comments made by Councillor Taylor over aspects of development at Isles Quarry West, how requests for information by him

had been dealt with and the conduct of Officers. A number of these comments had been posted on an internet website.

- 1.2.3 An independent external investigator (Wilkin Chapman Solicitors) was appointed to carry out the investigation into the allegation. Their report concluded there had been a breach of the Code of Conduct on the grounds of (i) bullying and (ii) bringing his office or the Council into disrepute
- 1.2.3 The Panel found that there had been a breach of the Code of Conduct in respect of obligation 3(2)(f), *“You must not conduct yourself in a manner which would reasonably be regarded as bringing your office or the Authority into disrepute”*. The Hearing Panel did not find that Councillor Taylor had breached paragraph 3(2)(a) *“You must not...(a) bully any person”*.
- 1.2.5 At the Hearing the Panel imposed 4 sanctions –
- a) Recommending to Council that Councillor Taylor be issued with a formal censure by motion (i.e. the issue of an unfavourable opinion or judgement or reprimand);
 - b) Recommending to Council that Councillor Taylor be removed from Area 2 Planning Committee until the end of April 2017;
 - c) Recommending to Council that they issue a press release; and
 - d) Publishing the Panel’s findings in respect of Councillor Taylor’s conduct on the Council’s website
- 1.2.5 Sanctions (a) to (c) above were ratified by full Council on 3 November 2015. Sanction (d) did not require further approval by full Council.
- 1.2.6 The full reasons for the decision of the Hearing Panel are set out in the attached Decision Notice (**Annex 2**).
- 1.3 Complaint 22/2015 – Tonbridge & Malling Borough Council/ Borough Green Parish Council**
- 1.3.1 On 4 January 2016 the Standards Hearing Panel met to determine an allegation that Councillor Mike Taylor had breached the Codes of Conduct of Borough Green Parish Council and Tonbridge & Malling Borough Council.
- 1.3.2 The complaint against Cllr Taylor arose from a letter dated 5 December 2014 that he wrote to the Planning Inspectorate in relation to an appeal against the refusal of a planning application for the construction of a residential extension at 13 Harrison Road, Borough Green.
- 1.3.3 In that letter, Cllr Taylor alleged that “...the size of extensions approved under TMBC Officer’s delegated powers has steadily increased to what we believe to be excessive proportions.” It was also alleged that objections to planning applications

were “always ignored” by Officers, and that “because the sole objector [to the application in question] 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.”

- 1.3.4 The Complainant, Mr Barry Hughes (who was the objector in question and referred to in Cllr Taylor’s letter, although not by name) completed a complaint form, in which he alleged the offending behaviour to be “*an attempt to bring me, the Borough Council and the whole planning process into disrepute by innuendo and inference without any shred of evidence.*”
- 1.3.5 An independent external investigator (Richard Lingard) was appointed to carry out the investigation into the allegation, and his report concluded that Cllr Taylor had breached
- (i) The obligation set out at paragraph 1 of the Borough Green Parish Council Code of Conduct, which requires members to
- ‘behave in such a way that a reasonable person would regard as respectful.’*
- and
- (ii) The obligation set out at paragraph 3(2)(f) of the Tonbridge and Malling Borough Council Code of Conduct, namely
- ‘You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the authority into disrepute.’*
- 1.3.6 The conclusions of the Independent Investigator were upheld by the Hearing Panel on 4 January 2016. The full reasons for the decision are contained in the Decision Notice which is annexed to this report as **Annex 3**.
- 1.3.7 At the Hearing the Panel imposed the following sanctions:
- (a) In relation to the Borough Green Parish Council Code, the Panel’s findings would be reported to the Parish Council. In addition, the Panel’s findings would be published as follows
- publication on the TMBC website;
 - by email to all Borough Councillors and Borough Green Parish Councillors;
 - by email to the local press; and
 - by email to all Parish Clerks
- (b) In relation to the TMBC Code, the Panel recommended that the Borough Council issue a formal censure. In addition, the Panel resolved to send a formal letter to Councillor Taylor, the terms of which were to be finalised by

the Panel in due course. The Panel's findings would also to be published in the same manner as set out above

- 1.3.8 Recommendation (b) above was ratified by full Council on 16 February 2016. Recommendation (a) did not require further approval by full Council.

1.4 Complaint 28/2015 – Mereworth Parish Council

- 1.4.1 On 8 December 2015 I received a complaint from a local resident about a Member of Mereworth Parish Council.
- 1.4.2 The principal allegation in the complaint was that the Councillor in question failed to leave the room (or at least the minutes were silent as to whether he left the room) during the consideration of an item relating to proposed redevelopment of land in the Parish, having declared an interest in that matter. It is further alleged that the Councillor did not specify what the nature of his interest was in the item.
- 1.4.3 The complaint made further allegations about the conduct of the meeting in question, and subsequent conduct by the Parish Council.
- 1.4.4 The initial assessment of the complaint was completed on 23 March 2016.
- 1.4.5 I considered that the conduct alleged by the complainant was capable of amounting to a breach of paragraph 5 of the Mereworth Code of Conduct, in that if proven, the conduct could amount to a failure to meet specified requirements relating to Disclosable Pecuniary Interests/ Other Significant Interests. The requirements of the legal jurisdiction test were therefore met.
- 1.4.6 However, I considered that the complaint failed the local assessment criteria, for the following reasons –
- (a) the alleged misconduct happened some 5 and a half months prior to submission of the complaint. Paragraph (f) of the local assessment criteria requires that allegations of misconduct must be less than 3 months old, unless exceptional circumstances exist. In the case of this particular complaint, I did not consider that exceptional circumstances existed to depart from the requirement that complaints should be made within 3 months from the date of the alleged conduct;
 - (b) The documentation supplied to me by the Clerk to the Parish Council confirmed that the Subject Member had declared an interest in the item in question. According to the Clerk, he then left the room and took no part in the discussion. There was therefore insufficient evidence to substantiate the complaint, contrary to paragraph (c) of the local assessment criteria;
 - (c) The letter of complaint also took issue with the conduct of the Parish Council in submitting their objection to the planning application, and in particular the reference to the history of vandalism at the property. There was no evidence to

suggest that this statement (whether correct or not) was made by the Councillor in question. Indeed, it appears to have been a position taken by the Parish Council as a whole rather than any individual member

1.4.7 The decision I reached was that no further action should be taken in respect of this complaint.

1.5 Legal Implications

1.5.1 The Borough Council is required under s28(6) of the Localism Act to have in place arrangements under which allegations can be investigated and decisions on allegations can be made.

1.6 Financial and Value for Money Implications

1.6.1 The costs of appointing external investigators in respect of the complaints detailed in this report totalled £13,156.25.

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Adrian Stanfield
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