

**DECISION NOTICE
of Hearing Panel on 12 October 2015**

Complaint dated 8 July 2014 relating to conduct of Councillor Francis Michael Taylor

- 1 On 12 October 2015, the Hearing Panel of the Joint Standards Committee of Tonbridge and Malling Borough Council ("TMBC") and all of the Parish Councils within the administrative area of TMBC considered a report of an investigation into the alleged conduct of Councillor Francis Michael Taylor ("Councillor Taylor"), a Member of Tonbridge and Malling Borough Council. A general summary of the complaint is set out below.

Complaint summary

- 2 Background: In January 2014 Councillor Taylor was elected to Tonbridge and Malling Borough Council (the Council) to represent the Borough Green and Long Mill Ward. This ward included the Isles Quarry Site, which Councillor Taylor had taken an interest in for a number of years. Councillor Taylor had consistently opposed the removal of the Isles Quarry Site from the Green Belt and its identification as a strategic development site. The Site was granted planning permission for residential development in June 2013.
- 3 During May and June 2014 Councillor Taylor sent numerous emails to Officers of the Council about aspects of the development at Isles Quarry West. Some of those emails contained comments which caused concern to the Officers. Councillor Taylor also posted information on a public website that repeated the comments which had caused concern.
- 4 Council Taylor's conduct in this matter caused concern for the Officers of the Council, including the Council's Monitoring Officer. Councillor Taylor was invited to a meeting with the Monitoring Officer and Chief Executive to discuss Councillor Taylor's conduct because of these concerns. That meeting took place on 27 June 2014. A comprehensive note of the meeting taken by Adrian Stanfield ("AS"), the Council's Monitoring Officer, is attached to the report of the Investigating Officer ("IO") and marked JTG2.
- 5 Following that meeting Councillor Taylor decided to refer himself to the Monitoring Officer by e-mail as it appeared to him that others considered his conduct to be in breach of the TMBC's Code of Conduct (see wording of e-mail at 6 below).
- 6 In an email dated 8 July 2014, sent to an extensive number of individuals and copied to the Council's Monitoring Officer, Chief Executive and others Councillor Taylor stated:

"At a recent meeting with Julie Beilby and Adrian Stanfield it was alleged that I had committed serious breaches of the Standards Code regarding "lack of respect and inappropriate comments and language to Council Officers", specifically Steve Humphrey and Lindsay Pearson.

Whilst I clearly take a different view, after some thought I realised that the code is more important than individual beliefs, and that justice must be seen to be done.

As a responsible member of this Authority, I am therefore formally reporting myself to the Monitoring Officer for the alleged breaches of the Standards Code."

- 7 The TMBC Code of Conduct does not contain an explicit requirement to treat others with respect. The Investigating Officer (IO) considered whether or not Councillor Mike Taylor may have failed to follow elements of TMBC's Code relating to bullying and disrepute which are set out below:

"General Obligations:
3(2) *You must not*

(a) bully any person...

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

Consultation with Independent Person

- 8 The Independent Person ("IP") raised the following matters:
- 8.1 The IP reminded the Panel that his views must be sought and taken into account under section 27(a) of the Localism Act 2011.
- 8.2 The allegation had been set out at paragraph 4.17 of the IO's report but the Investigating Officer had investigated a breach of paragraphs 3(2)a which referred to not bullying any person and 3(2) (f) which referred to behaviour which could reasonably be regarded as bringing the Councillor's office or the Authority into disrepute.
- 8.2.1 The IP referred to the meeting of 27 June 2014 and the notes made of that meeting by Councillor Taylor and found that no reference to bullying or disrepute had been made and that the only references made by the officers at that meeting were concerned with disrespect.
- 8.2.2 The IP believed that the substance of Councillor Taylor's self-referral was disrespect which was not an enforceable part of the TMBC Code of Conduct, it being solely inferred from the Nolan Principles. He indicated that disrespect needed to be an express obligation within the Code before a member could be found to be in breach of it.
- 8.3 The IP referred to emails being very important as they are contemporaneous with events and therefore carry more weight. He accepted that there was a previous history concerning planning matters and the issue of contamination between Councillor Taylor and the Council which had caused some conflict

and recognised that the fact that the site had been a landfill site would have been a very important matter. He indicated that Councillor Taylor believed that the Council was withholding information intentionally, but in his view, this was based on a misunderstanding by Councillor Taylor, in that Councillor Taylor believed that the obstruction survey which was supposed to be an attachment to an e mail was actually a survey plan and not a full blown report at all. He drew the Panel's attention to email 9 which confirmed that the obstruction survey which had been sent to Councillor Taylor was actually a plan and this had been relayed to Councillor Taylor by AS in that email: "003 Obstruction Survey [which] is quite different to the Ground Obstruction Report and is simply, as the name suggests, a survey plan." The IP referred to this misunderstanding by Councillor Taylor and him genuinely believing that he had been misled rather than actually having been misled by the Council.

8.4 In relation to the allegation of disrepute, the IP recognized that Councillor Taylor was raising matters with the best of intentions for the benefit of his community. He also referred to the difference between making rude comments to your equals and making rude comments to those officers not so senior within an organisation and referred to those higher up within an organisation being more able to hold their own.

8.5 In making an allegation of deception by officers to members of the public, the IP indicated that Councillor Taylor risked libelling officers.

8.6 The IP considered that the Panel should look at all of the emails as a whole and consider whether Councillor Taylor had raised matters in a proper manner, whether he got proper answers, and consider what effect (if any) his conduct had on members of the public. He indicated that if there was no reaction from the public, they had probably ignored the language used by Councillor Taylor. He referred to officers not knowing what reaction there had been to the emails and posts as they did not appear to have provoked any telephone calls or emails to the Council and there had not been any other complaints about the matter from the public. He suggested that if the emails had been ignored by the public they did not bring the Council into disrepute.

8.7 In relation to the bullying allegation the IP made the following representations:

8.7.1 The test for bullying was set out at paragraph 7.27 of the IO's report

"Bullying may be characterized as offensive, intimidating, malicious insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

This can be contrasted with legitimate challenges which a member can make in challenging policy or scrutinizing performance".

The IP asserted that there were 3 elements in this test:

- (a) There being a weaker person (such as a secretary who may have overheard what was being said rather than actually being the subject of the behaviour);
- (b) Actual influence over the person being bullied; or
- (c) Perceived influence over that person.

The IP did not believe that Councillor Taylor had any power over the officers involved in this matter and concluded that there was no bullying. His reasons were:

- 8.7.2 In the meeting on the 27 June 2014 no reference was made to bullying by the officers present and in addition in the written statements made by the officers involved the language used by them did not suggest bullying.

The IP referred to the Statement of Steve Humphrey where he said "Sadly this did not seem to move matters forward demonstrated by the content of an email from Councillor Taylor later that day," he indicated that this did not sound like a person being bullied. (p 105)

He also referred to the statement of Lindsay Pearson at paragraphs 15, 16 and 17 (page 111) and further at paragraph 21 Lindsay Pearson described Councillor Taylor's behaviour as "rather sad and disappointing rather than more offensive." and the IP concluded that Lindsay Pearson did not appear to feel bullied. (p112)

- 8.7.3 The IP believed that the allegation against Councillor Taylor was a serious one but he did not feel that Councillor Taylor's conduct had, in the words used by the IO, "crossed the line" and he suggested that the Panel should not make any finding against Councillor Taylor unless they were fully satisfied that Councillor Taylor's behaviour had "crossed the line."

Findings

In the following paragraphs, any references to a page number or paragraph are a reference to pages or paragraphs within the Report of the Monitoring Officer dated 12 October 2015 unless otherwise stated.

After considering the reports of the Monitoring Officer and of the Investigating Officer and the submissions of the parties to the Hearing and the testimony of the witnesses (Julie Beilby, Adrian Stanfield and Steve Humphreys), and the views of the Independent Person, the Hearing Panel made the jurisdictional decision recorded in paragraph 48 of this notice below. The factual matters set out in the IO's report were not disputed and so the Panel broadly took those facts as read. They made the following findings:

Facts

- 9 Councillor Taylor was elected as ward member for Borough Green and Long Mill Ward in January 2014. This ward included within it the site known as Isles Quarry West ("IQW") (p47– paragraphs 5.1/5.3).

- 10 The Borough Council has adopted a Code of Conduct that includes provisions for its members to have due regard to the Nolan Principles, although these do not form part of the Code. Under the heading of "Leadership", these principles state that a Member should show leadership by promoting and supporting high standards of conduct and behaving in accordance with the Nolan principles when championing the interests of the Community. The Code requires Members to not bully any individual and not act in a manner that might bring the members' office or the Authority into disrepute (p47 – paragraph 5.2).
- 11 Councillor Taylor opposed the designation for Isles Quarry West as a strategic development site in the Core Strategy and Development Land Allocation under the LDF process (p108).
- 12 In June 2013 planning permission was granted for the residential development of IQW (p35 –paragraph 4.76).
- 13 Councillor Taylor has a long standing association with IQW having worked as a haulage contractor operating out of the quarry and also by virtue of his residence in the area. Councillor Taylor has taken a close interest in the site since the commencement of consideration of the area as a potential development site (p47 – paragraph 5.4)
- 14 For some time Councillor Taylor has been of the opinion that the designation of the site for development was not properly considered. He has made a number of complaints about the process and other matters relating to the development of the site (p47, paragraph 5.5) but no finding of wrong doing by the Council has been made during any of the investigations resulting from these complaints. (p.78 paragraph 4 of statement of Julie Beilby)
- 15 After Councillor Taylor's election to the Borough Council in January 2014 he took up his concerns over the development at IQW in his capacity as the Ward Member for the area. This involved numerous emails between him and various officers of the Council (p47 paragraph 5.7) which were sent by Councillor Taylor to those persons stated in the email address line and others (see 19 below). These emails are referenced in the schedule of emails at JTG10 (p.142) which are marked for reference purposes as emails 1, 2, 3, 4, 5, 6, 7, 11, 12 and 13 respectively. The content of these emails was not in dispute at the Hearing and Councillor Taylor confirmed that he had sent them.
- 16 Councillor Taylor also sent what he referred to as "Freedom of Information" ("FOI") requests to the Council in respect of documents relating to the planning permission for the IQW site. (p123 answer by Councillor Taylor). These were dealt with by the Council under the Environmental Information Regulations 2005 ("EIR") (p162 second paragraph). [For ease of reference the request for information made by Councillor Taylor on 6 March 2014 will be referred to in this decision notice as an FOI request notwithstanding the finding that it fell to be considered by officers under EIR.]

- 17 Councillor Taylor was dissatisfied with the information he received in response to his FOI request (p49 paragraph 6.1(b) additional submissions of Councillor Taylor numbered 4.28 4.29 and p50 additional submission numbered 4.96). Councillor Taylor threatened to make a complaint to the Information Commissioner about his dissatisfaction (p74 Note of Meeting of 27 June 2015 first paragraph), however no such complaint was made.
- 18 During May and June 2014 a number of the emails sent by Councillor Taylor to officers and members, which had also been copied to external bodies and to individuals, caused concern to senior officers at the Council due to their tone, content and manner of distribution. These included emails marked 2, 3, 4, 5, 6, 7, and 13 at JTG10 (page 142).
- 19 The table below sets out the distribution list of emails 2 to 7:

Email	Date	To
Email 2	20/05/14	Lindsay Pearson, Steve Humphrey and copied to Borough Green Parish Council ("BGPC") members
Email 3	30/05/14	Nicolas Heslop, Julie Beilby, and copied to Jennifer Wilson of the Environment Agency
Email 4	12/06/14	Lindsay Person, Steve Humphrey and copied to Russell Dawkins at Crest Tony Sayer of BGPC and all members of that Parish Council Jennifer Wilson of the Environment Agency
Email 5	13/06/14	Adrian Stanfield, Hazel Damiral and copied to all members of BGPC
Email 6	14/06/14	All members of TMBC and copied to Adrian Stanfield
Email 7	18/06/14	Adrian Stanfield, Nicolas Heslop and copied to Tim Shaw and members of the Parish Council

20. The emails included references to Council Officers:
- Being in the developers' pocket (19 May 2015 email from Councillor Taylor to Council Officers)
 - Lying and misleading Members (email 5) (email 6) (email 11)
 - Wasting public funds (email 7)
 - Not carrying out their duties properly (email 5) (email 7) and
 - Breaking the law (email 3) (email 4) (email 7)
- 21 Councillor Taylor ran a local news website under the name of "Borough Green News" ("BGN") which was hosted in America to which only he could post material. There was also a guest book for others to leave comments (p127).

- 22 Some of the allegations mentioned at 20 above were also posted on this website including officers:
- Being in the developers' pocket
 - Wasting public funds
 - Lying and withholding information
- (p172)
- 23 On 30 June 2014 Councillor Taylor posted a paragraph assessing Mr Stanfield's competence as a Solicitor on this open website and accusing him of using "devious little tricks" and stated that "in the future I [*Councillor Taylor*] will not meet with him [*Adrian Stanfield*] without a witness present I am too trusting by far" (p34).
- 24 Mr Stanfield was offended by these posts and considered them to be a direct personal attack which impugned his integrity as a Solicitor of the Senior Courts (p34).
- 25 Some of the emails directed to officers contained inappropriate language. An email dated 13 June was sent by Councillor Taylor to all members of TMBC in response to an email which Mr Stanfield had written to Councillor Taylor and his fellow ward colleagues and others to set out a summary of Counsel's advice which had been sought in view of the comments made by Councillor Taylor about the duties of the Council regarding remediation measures at the Isles Quarry West site.(p151 email 5)
- The inappropriate language used by Councillor Taylor in this email was "My first response to your email began with a b and ended cks".
- 26 Councillor Taylor stated in his interview with the IO that this comment was aimed at Adrian Stanfield.
- 27 Councillor Taylor recognised in interview that some of his emails questioned the integrity of senior officers and therefore the reputation of the Council (p43 paragraph 4.130), (p44 paragraph 4.141) (p45 paragraph 4.143) (p43 paragraph 4.135).
- 28 Councillor Taylor was invited to a meeting with senior officers of the Council, the purpose of which was to discuss his behaviour (27 June 2014).
- 29 The Council obtained an opinion from Counsel as a result of the concerns raised by Councillor Taylor regarding contamination remediation at Isles Quarry West which was circulated to Members of the Parish Council and TMBC.
- 30 Councillor Taylor accused AS of "biasing" the instructions to Counsel and misleading all members of the Council and of wasting public funds (p32 paragraphs 4.57 and 4.58) (emails and post on BGN web-site (p172 JTG12)).

- 31 AS found this email unacceptable as it inferred he was intending to mislead all members of the Council (paragraph 4.57).
- 32 Councillor Taylor accused AS of directly condoning an alleged illegal act (p33 paragraph 4.59) for withholding information requested under a Freedom of Information Act request by email on 18 June 2014 (email 7).
- 33 AS sent Councillor Taylor an email on 18 June (email 9) expressing strong concern about Councillor Taylor's emails of 12 June 2014 and 30 May 2014 and 20 May 2014 and 14 June 2014 (p161 email 9).
- 34 AS explained to Councillor Taylor the duties of a local authority in relation to information requested concerning environmental information under the Environmental Information Regulations 2005 ("EIR") in an email dated 18 June 2015 (p161 email 9):

"The Environmental Information Regulations 2005 (EIR) give rights to public access to environmental information held by public authorities. There are similarities between the two, but there are also important differences. Information requested relating to contamination would fall to be dealt with under EIR rather than FOI.

Under FOI, the information to be communicated to an applicant is the information held at the time of the request is received, except that account may be taken of any amendment or deletion made between that time and the time the information is communicated. The position with EIR is different, in that regulation 5(1) requires a public authority to make information that it holds available on request, and regulation 12(4)(a) provides an exception for information not held at the time the request is received. In either case, it is not possible to seek information that may or may not be held by a public authority at some unspecified point in the future".

- 35 AS confirmed in his email to Councillor Taylor that an obstruction report relating to IQW (which Councillor Taylor believed to have been withheld from him) was received by the Borough Council on 21 May 2014 in hard copy and 19 May 2014 by email which was 2 ½ months after the FOI request dated 6 March 2014 made by Councillor Taylor had been sent (email 9).
- 36 The actual obstruction report relating to IQW was sent to Councillor Taylor 16 days after it was received by the Borough Council (p 162 email 9, first paragraph).
- 37 AS warned Councillor Taylor about his conduct in an email dated 18 June 2014 in his position as Monitoring Officer at the Authority "It is unacceptable for any Councillor to make spurious and unfounded allegations against Officers. I cannot put it more simply than that" and he invited him to attend a meeting with the Chief Executive and Steve Humphrey to discuss the conduct issues (email 9).

- 38 At the meeting on 27 June 2014, in his capacity as Monitoring Officer, AS warned Councillor Taylor about his behaviour and advised him that there was a clear distinction between a grievance held by a member and the way that grievance was dealt with.

Findings

- 39 The Panel considered that Councillor Taylor was acting in his official capacity at the time of the conduct in question, and the TMBC Code of Conduct was therefore engaged.
- 39.1 In coming to this decision it had regard to paragraphs 7.1 to 7.3 of the IO's report and his conclusion at paragraph 7.4 that Councillor Taylor was acting in his official capacity. The Panel agreed with both the reasoning of the IO and the conclusion and found that Councillor Taylor was acting in his official capacity in sending the emails and making posts on BGN website, (identified at paragraph 15 above and JTG12 (p.172-173)).
- 40 The Panel found that Councillor Taylor breached paragraph 3(2)(f) of the TMBC Code of Conduct, namely:

"You must not conduct yourself in a manner which would reasonably be regarded as bringing your office or the Authority into disrepute."

- 40.1 The Panel found that it was right and proper that members should raise concerns about the implementation of development within their ward and also to challenge the actions of officers of the Council in a robust manner. There was nonetheless a clear distinction between matters being raised in the correct forum using appropriate terms and the tone and the manner in which those matters were pursued.

By way of example as to the correct forum for raising matters, in relation to the FOI request made by Councillor Taylor, it was evident that Councillor Taylor was dissatisfied with the Council's response. The Panel believed that he could have made a complaint to the Information Commission rather than making unsubstantiated allegations relating to withholding information and breaking the law. The Panel noted that the Independent Person in his representations to the Panel was of the view that Councillor Taylor's allegations relating to the FOI request and withholding information (and by inference to this also his statements concerning officers breaking the law) were based on a mistake. The Panel agreed that there was no foundation to these allegations. (Finding of fact numbered 34, 35, and 36 above).

- 40.2 In reaching the conclusion that the TMBC Code of Conduct was breached the Panel considered the test set out by the IO at paragraphs 7.5 to 7.7 of his report (p53-54) and whether the conduct of Councillor Taylor could reasonably be regarded as tarnishing the reputation of the Authority and thereby bringing the Authority into disrepute.

- 40.3 The Panel considered the test to be an objective one as to whether Councillor Taylor's conduct could cause the reputation of the Authority to suffer in the mind of a reasonable person, and therefore bring the Authority into disrepute.
- 40.4 The Panel considered that taken in isolation some of the emails by themselves may not have led to a breach of the Code, and in the words of the IO "crossed the line" into unacceptable behaviour, but taken in totality and due to the wide circulation of the emails to external bodies and people and their content, the offending parts of which are set out at paras 7.9, 7.11, 7.13, 7.15, 7.17, 7.19 and 7.20 of the IO's report (p 54-55) this amounted to a breach of paragraph 3(2)(f) of the TMBC Code of Conduct as it was behaviour which could reasonably be regarded as bringing the Authority into disrepute by tarnishing its reputation.
- 40.5 It was further noted by the Panel that Councillor Taylor had acknowledged that his comments could be considered as an attack on the integrity of officers and the Council and that this could affect the reputation of the Council (p56 paragraph 7.21 and answers given by Councillor Taylor in his interview with the IO at p121, 124 and 128).
- 40.6 The Panel also considered the representation made by the IP on this point that there was no evidence to suggest that the reputation of the Council had been tarnished as no complaints appeared to have been received about the Council's behaviour in this respect. The Panel found that the test to be applied was not whether in fact the reputation of the Council had been damaged, but whether the member had conducted himself in a manner which "could reasonably be regarded as bringing" [his] "office or the Authority into disrepute" and it found that he had done so.
- 40.7 With regard to the Posts on BGN (website) the Panel were particularly concerned that these were not limited to circulation to named persons but had unlimited worldwide circulation and therefore the ability to extend the remit of those who may believe that the allegations made were true therefore potentially adversely affecting the reputation of the Council.
- 40.8 The Panel had no hesitation in finding that the emails and posts referred to amounted to a breach of Paragraph 3(2)(f) of the TMBC adopted Code of Conduct.
- 40.9 In coming to its conclusion the Panel also had regard to paragraph 7.26 of the IO's report dealing with Article 10 of the European Convention on Human Rights ("ECHR") and the advice of the legal advisor to the Panel.

The Panel consider that on the facts it was entitled to find a breach of the Code and that this was an imposition on Councillor Taylor's right to freedom of expression. It noted that usually political expression was afforded a very high level of protection under the ECHR, but that where comments made involved the personal abuse of officers, as in this case (see paragraph 20, 22, 23, 27, 30, 32 of the findings of fact above), the imposition of a restriction on that right was a justified interference in order for the protection of the reputation or the

rights of others (namely the officers of the Council referred to in those emails and post on BGN website).

41 In relation to the allegation concerning paragraph 3(2)(a) of the Code

"You must not(a) bully any person"

The Panel found that the Code had not been breached. Whilst the Panel took into account the view of the IP and the fact that none of the officers in giving evidence felt that they had been bullied it found that had the officers felt bullied, a different decision may have been made.

- 41.1 The Panel disagreed with part of the representations of the IP in relation to bullying and found that it was possible for a single Member to bully an officer of the Council. The Panel agreed with the reasoning and conclusions of the IO at paragraph 7.31 of his report and that Councillor Taylor was in a position of "actual or perceived influence" over the officers of the Council. The panel accepted the test put forward by the IO in relation to this point at paragraph 7.28 (p57) of his report where he referred to the two factors to be considered in relation to bullying. The second of these being whether the behaviour in question:

"...was directed at a weaker person or a person over whom Councillor Taylor had an actual or perceived influence".

They found that this part of the test was satisfied but that the first part of the test was not as the Officers concerned had not felt bullied.

The overall test for bullying had not been satisfied on the facts and the Panel therefore found that there was no breach of the Code relating to bullying.

- 41.2 The Panel expressed the view that had the behaviour in question been directed at less senior officers they would be very likely to have come to a different conclusion. The Panel noted that the behaviour in question had the essence of "bullying" about it, but they had to also consider its effect on the persons to whom it was directed. In this case, because the officers concerned did not feel bullied the test for bullying had not been made out on the facts.

- 42 In considering the representation of the IP in paragraph 8.2, the Panel found that the term 'disrespect or disrespectful behaviour' could apply to behaviour which brought the Councillor's office or the Authority into disrepute and often behaviour may fall to be considered under more than one provision in the Code of Conduct. The Panel noted that the terms disrespect and disrepute were not necessarily mutually exclusive of each other.

- 42.1 The TMBC Code of Conduct did not have disrespect as an enforceable obligation, as it was within the Nolan Principles which cannot be enforced by way of a complaint. Nonetheless the Panel considered that Councillor Taylor's behaviour was disrespectful, and whilst this was not within the TMBC Code in itself, it was also behaviour which could reasonably be said to have

the effect of bringing the Councillor's office or the Authority into disrepute or could amount to bullying which are both breaches of the Code of Conduct.

- 42.2 The Panel considered the breaches of the Code set out in the IO's report at paragraph 4.18, relating to "bullying and disrepute" and agreed with the conclusion of the IO at paragraph 4.23 of his report for the reasons stated. Whilst the cases referred to were recognised by the Panel as being only guidance to the Panel, they were guidance which the IO and the Panel was properly entitled to take into account. The panel concurred with the view of the IO that "One set of facts can and often does involve more than one breach of the Code."

Sanctions applied

Before considering whether it was appropriate to impose any sanction, the Panel heard submissions from the Deputy Monitoring Officer and the Subject Member. The Independent Person was consulted, but did not wish to provide any representations with regard to sanctions but did make some comments which are summarised below at paragraph 45.

- 43 The representations of the Deputy Monitoring Officer were made available in writing after the Hearing and have been annexed to this decision notice for ease of reference.
- 44 Councillor Taylor thanked the Panel for taking a long time in deliberation and considering the matter properly and indicated that he had been reading the seven principles of public life whilst the Panel had been deliberating. He believed that he had upheld them. He made reference to the substantial majority of the votes which he obtained when he was elected as a Borough Councillor and felt that this reflected that the people who had voted for him believed that he was doing his job which he believed included holding officers to account.
- 44.1 In relation to censure and his removal from Area 2 Planning Committee and the other sanctions imposed he was not unhappy but viewed his removal from the Area 2 Planning Committee as hurting the people of Borough Green.
- 45 Whilst the IP did not make any recommendations on the sanctions to be imposed he pointed out that there was no question of suspension of Councillor Taylor as a Councillor within the TMBC arrangements.
- 45.1 The IP believed that Councillor Taylor had good standing with his local constituents.
- 45.2 The IP referred to an article in the Sevenoaks Chronicle dated 7 July 2014 which was after the meeting held on 27 June 2014 to discuss Councillor Taylor's behaviour towards officers. This, he said, referred to Councillor Taylor contacting officers when he suspected that work had been undertaken at IQW without the relevant planning permissions being in place. The Council acted upon that notification and work was stopped until the planning breach

had been rectified. The IP indicated that Councillor Taylor was still doing his duty as a Councillor after his conduct had been called into question.

The Hearing Panel imposed the following sanctions

- 46 The Panel have determined it is appropriate to impose four sanctions in respect of the breach of the TMBC Code of Conduct in this case:
- 46.1 Recommending to Council that Councillor Taylor be issued with a formal censure by Members;
- 46.2 Recommending to Council that Councillor Taylor be removed from Area 2 Planning Committee until the end of April 2017 (or any successor thereof) with effect *immediately from when that decision is properly made under the Council's constitutional rules; [* this point being clarified after a question raised by Councillor Taylor regarding the sanctions at the Hearing and when they would take effect]
- 46.3 Recommending to Council that they issue a press release;
- 46.4 Publishing its findings in respect of Councillor Taylor's conduct on the Council's website.
- 47 The following reasons apply to the recommendations of the Panel.
- 47.1 The recommendations were within the possible range of recommendations which the Panel was entitled to make as they were fair and proportionate and were within the Adopted Arrangements at paragraph 4(a),(b), (k) and (l) respectively of the Hearing Panel Procedure which set out the possible range of sanctions.
- 47.2 The Panel looked at the questions within the Council's Adopted Arrangements in paragraph 4.4 of the Hearing Panel Procedure in coming to this decision:
- (a) What was the Subject Member's intention and did they know that they were failing to follow the Borough Council's Code of Conduct.*

The Panel considered that Councillor Taylor did intend to call the integrity of officers of the Council into disrepute as he had given evidence to that effect and by reason of that should have known that this could have an effect on the reputation of the Council. The Panel agreed with the representation of the Deputy MO on this point.

(b) Did the subject member receive advice from officers before the incident and was that advice acted on in good faith?

The Panel did not find that relevant training had been given before the incidents in question (submissions of Deputy MO attached to Decision notice on page 2) but recognised that since the allegations had been made Councillor Taylor had been trained on the Code of Conduct in a meeting on

1 July 2015 and therefore training was not considered as a relevant sanction as he had now been trained.

The Panel noted that attempts were made to advise Councillor Taylor about his conduct by senior officers in the meeting on 27 June 2014 but that these were not taken well and Councillor Taylor still carried on with the offending behaviour as set out by the Deputy MO in his submissions where he referred to the post made on BGN website by Councillor Taylor relating to AS's behaviour as allegedly amounting to "little devious tricks".

(c) Has there been a breach of trust.

The Panel considered the representation made by the Deputy MO on this point and agreed that there was a loss of trust between Councillor Taylor and the three senior officers who gave evidence to the Hearing. It agreed that due to the senior positions of these officers and Councillor Taylor seeking to impugn their character in a very public manner to a very wide audience that there had been a breach of trust.

(d) Has there been financial impropriety?

The Panel did not believe there was any allegation or evidence of financial impropriety.

(e) What was the result/impact of failing to follow the Borough Council's Code of Conduct?

The impact of the Conduct was that senior professional officers had been publicly accused of lying which could affect their personal and professional reputation and by implication that of the Council. This was compounded by the accusations being made on a website with world-wide circulation.

(f) How serious was the incident?

The incident was very serious as the comments and accusations which were made by Councillor Taylor were very widely circulated, potentially to a world-wide audience and were not substantiated and proven in the emails and posts which were made and could therefore have brought the Council into disrepute in the minds of a very wide audience. The Panel found this to be especially relevant given the previous very good reputation of the Council as demonstrated by Julie Beilby in her statement.

(g) Does the Subject Member accept that they were at fault?

Councillor Taylor's comments during interview and his representations made to the Panel in the hearing clearly demonstrated that he believed that his conduct was justified. The Panel noted that the IO and officers giving evidence to the hearing all believed that Councillor Taylor genuinely believed that he had been lied to and misled by officers and the Council over planning matters at IQW but that he did not accept that he was at fault.

(h) *Did the Subject Member apologise to the relevant persons?*

Councillor Taylor did not apologise and the Panel were of the view that he would not do so given his firm belief that he was in the right.

(i) *Has the Subject Member previously been reprimanded or warned for similar misconduct?*

No.

(j) *Has the Subject Member previously breached the Borough Council's Code of Conduct?*

No

(k) *Is there likely to be a repetition of the incident?*

The Panel took into account both the representations made on this point by the Deputy MO and the evidence before the Hearing and in particular the testimony of Councillor Taylor himself and believed that it would be very likely that the offending behaviour would be repeated as Councillor Taylor believed that his behaviour was justified and referred to it as being acceptable when interviewed by the IO.

- 47.3 The Panel considered that the sanctions which they imposed were relevant and proportionate to Councillor Taylor's conduct as he had brought the Council into disrepute through his actions and widely circulated his emails and posts and it was right that the findings against Councillor Taylor should be widely circulated to redress the damage which may have been caused to the Council's reputation and that of its senior officers
- 47.4 In particular the Panel was of the view that Councillor Taylor's removal from the Area 2 Planning Committee (or its successor) was proportionate as the breach found was a very serious one, impugning the reputation of both senior officers and the Council by association which related to planning matters and that the sanction was therefore both relevant and commensurate with the gravity of the conduct by Councillor Taylor.
- 47.5 In relation to the representation made by Councillor Taylor regarding his removal from Area 2 Planning Committee or any successor to it until the end of April 2017 the Panel noted that there are 2 other members who represent Borough Green and Longmill who could represent the ward on behalf of members of the public.
- 47.6 The Panel also took into account Councillor Taylor's right to freedom of expression as set out in article 10 of the European Convention on Human Rights ("ECHR") as they were advised that the imposition of a sanction can interfere with that right.

- 47.6.1 The Panel found that whilst an individual was able to hold opinions and receive and impart information and ideas without any interference by public authority, Article 10(2) of the ECHR provided for the circumstances where such rights can be interfered with (which are fully set out in the representations of the Deputy MO). This included such "restrictions or penalties as are prescribed by law and are necessary in a democratic society...for the protection of the reputation or rights of others."
- 47.6.2 Case-law which was referred to by the Deputy MO in his representations on sanctions established that public officials should be free to carry out their duties "free of perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty."
- 47.6.3 The Panel believed that they were entitled to impose a sanction in view of Councillor Taylor's conduct and that this amounted to a breach of his freedom of expression under article 10(1) but that given that the emails sent by Councillor Taylor and the posts made by him included personal attacks on the integrity of officers of the Council, that this interference was justified "in a democratic society for the protection of the reputation or right of others", those others in this case being the senior officers who had been impugned by his actions. The Panel found that the higher degree of protection which was normally afforded to political expression should not apply in this instance as Councillor Taylor's conduct amounted to a personal attack on public officials carrying out their duties and was a personal attack on their integrity.

Findings on Jurisdictional matters:

The Panel made two jurisdictional decisions at the Hearing:

48. It considered the report of the Deputy MO in the papers and in particular paragraph 1.1.4 c) of that report which requested the Panel to consider whether to exercise its discretion in rule 14.1 of the TMBC adopted arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011 (p 183-212) ("the Adopted Arrangements") to allow Mr Dolton to appear before the Hearing in the place of Mr Goolden and present the report of the Investigating Officer as Mr Goolden was unable to attend.

Rule 14.1: "The Borough Council...has delegated to the Monitoring Officer and the Hearing Panel 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."

The Panel considered the test in paragraph 14.1 of the Adopted Arrangements and found that it was expedient to secure the effective and fair consideration of the allegation against Councillor Taylor to carry on with the Hearing today with Mr Dolton representing the IO. In coming to its decision the Panel noted that neither they nor the Subject Member, Councillor Taylor,

wished to ask any questions of Mr Goolden and that Councillor Taylor had stated that he was happy to proceed with Mr Dolton taking the place of Mr Goolden at the Hearing.

The Panel also considered that Mr Dolton had carried out all of the interviews with the witnesses in this matter and was sufficiently close to the case to be able to act competently in the place of Mr Goolden. They noted that whilst Mr Dolton was not legally qualified that the Panel had the assistance of a legal advisor relating to points of law which may arise. They came to the conclusion that in all of these circumstances further delay in hearing the complaints against Councillor Taylor, to allow Mr Goolden to attend, would not be in the public or Councillor Taylor's interest. The Panel exercised their discretion to allow the Mr Dolton to appear before the Panel in the place of Mr Goolden and Mr Dolton was subsequently referred to as the IO.

49. Councillor Taylor sought to introduce written material before the Hearing which no one had the opportunity to look at prior to the Hearing. The legal advisor and MO raised the point that the Panel could allow this new material to be heard at the Hearing if the Panel exercised its discretion under rule 14.1 set out above in paragraph 48. A copy of the material in question was given to each of the Panel members, the legal advisor, the IP and the IO and Monitoring Officer.

The Panel retired and looked at the material which Councillor Taylor sought to introduce at the Hearing which related to matters going back to the adoption of the Local Plan by Borough Green Parish Council and the planning history of the IQW site. It found that it was fair and expedient to allow Councillor Taylor to present this material when he was putting his case to the Hearing but that as it related to matters which long preceded Councillor Taylor's membership of the Borough Council in January 2014, it could only be relevant to the reasons why Councillor Taylor acted as he did and not to the fact finding part of the proceedings as to whether there was conduct which amounted to a breach of the TMBC Code of Conduct.

The material which Councillor Taylor sought to introduce was relevant to the reasons why Councillor Taylor felt compelled to challenge officers and to use the language he had used in emails and posts concerning Council officers and departments within the Council. The Panel agreed to admit the material at the fact finding part of the Hearing albeit that it was done so on the strict basis that it amounted to mitigation should Councillor Taylor be found to have breached the Code of Conduct, which had not at this point in the proceedings yet been found to have occurred. The Panel were prepared to allow it to be referred to at this point in order that Councillor Taylor would continue to be engaged with the process at the Hearing to secure the effective and fair consideration of the reasons why Councillor Taylor acted as he did.

The Panel noted that the fact finding part of the Hearing was concerned with Councillor Taylor's conduct as a Borough Councillor since January 2014 and the inclusion of this material was only relevant to motive. This point had been dealt with in the report of the Deputy MO at paragraphs 1.1.8 to 1.1.10 (p8).

In coming to their decision the Panel also noted that Councillor Taylor had been told by the IO that the investigation and case would not look beyond his behaviour as a Councillor:

"I think it's very important that we have a context for this interview and meeting and I felt it very relevant that you gave your perspective, as you have done, on the background of the Isles Quarry development from when it first started to today. Erm, but I now have to emphasise to you that our role and my role within this is to gather and consider evidence and facts relating purely to your behaviour whilst interacting with those officers and then indeed our firm will advise the Council, by a report, whether in our opinion, that does or does not breach the Code of Conduct and I want to emphasise that we will not be conducting investigations into the actions of the Council or any officers within the Council or historic actions of officers that used to be in the Council relating to the actual planning application, planning process. I just want to make that clear for the record."

Councillor Taylor responded:

"Well I appreciate that this investigation is purely about my statement about Planning Officers. But what I have found and I will admit I have gone as close to the line of beach of the code as I can, because the only way to get any response ... is to kick hard and keep kicking."

The Panel note that Councillor Taylor was aware that the investigation would not be into matters which pre-dated his membership of the Council. They allowed the papers to be submitted in the fact finding part of the meeting but only on the basis that they are relevant to the reasons why Councillor Taylor felt that he had to act as he did. They were permitted to be presented as mitigation should the Panel find there was a breach of the Code or Conduct at the relevant time in the meeting. The papers did not relate to conduct by Councillor Taylor when he was an elected member of the Council and therefore no finding of fact was made on them.

The Hearing Panel did not make any further recommendation(s)

Appeal

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

Notification of decision

This decision notice is sent to the:

- Councillor Taylor
- Complainant – Councillor Taylor

Additional help

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please contact our Customer Services on 01732 844522 or email customer.services@tmbc.gov.uk. We welcome calls via Typetalk.

Signed:**Date****Print name:***JANET SERGHIN*

Chairman of the Hearing Panel

Tonbridge and Malling Borough Council

IN THE MATTER OF THE LOCALISM ACT 2011

STANDARDS HEARING PANEL RE: COUNCILLOR MIKE TAYLOR

REPRESENTATIONS OF THE DEPUTY MONITORING OFFICER ON THE APPLICATION OF SANCTIONS

I have three headings under which I would like to address the panel:

- The questions which the panel must consider, according to paragraph 4.1 of the Hearing Procedure at Annex 4 of the Arrangements
- The Right to Freedom of Expression, and in particular Political Expression
- Sanctions

The Questions which the Panel must address

Under the Hearing Procedure, the Panel is required to consider a series of questions, a to k, and in addition any other relevant circumstances or other factors specific to the local environment.

I will briefly touch upon each of those questions in order to draw to your attention those facts which have been established which are of particular relevance to each question:

- (a) What was the subject member's intention and did they know they were failing to follow the Borough Code of Conduct?

According to the report of Jonathan Goolden, at paragraph 7.29 "publicly calling a person a liar and questioning an individual's competence in their job... appears to be intended to humiliate them by circulating those comments to other individuals."

There are a number of instances throughout the course of conduct complained of where comments of this nature are circulated either to a wider audience of PC and/or BC members, and in some occasions, indiscriminately and globally by way of publication on a publicly accessible website.

In particular, I highlight two comments levelled at Adrian Stanfield: (i) an email to all BC members on 14 June 2014 stating that "Adrian's email/ Counsel's opinion is intended to mislead rather than inform" and (ii) a comment, posted on Cllr Taylor's "Borough Green News" website that Mr Stanfield had employed "little devious tricks".

In my submission, these comments clearly call into question Mr Stanfield's professional standing as a Solicitor and it was clearly Cllr Taylor's intention, as set out in the transcript of his interview at page 68 of the Schedule of Evidence, to "challenge the integrity of the senior solicitor".

The intemperate nature of the language used, and Cllr Taylor's confirmation in interview, demonstrates that his intention was to impugn the standing of the senior officers, in front of the members of the Council and BG Parish Council, and the wider public in those instances where the exchanges were subsequently published on his website.

Whilst Cllr Taylor maintains that he believed he was justified in taking the approach that he did, and believes he was the "right side of the line" in relation to the Code of Conduct, in my submission no reasonable person in Cllr Taylor's position could have thought they were complying with the code of the conduct when making these accusations in such a public manner.

- (b) Did the subject member receive advice from officers before the incident and was that advice acted on in good faith?

Cllr Taylor received training on bias and predetermination from the MO on 6 March 2014. However I am not aware that Cllr Taylor received any general training on the Code of Conduct, nor is this generally offered. Cllr Taylor is, however, an experienced Parish Council member and would have been aware of and familiar with acting under a member code of conduct.

The "offending" behaviour, however, continued beyond the 27th June meeting with the MO- the "little devious tricks" comment appearing on the BG News website on 30 June. It therefore seems apparent that Cllr Taylor did not act to change his behaviour even after the MO had taken steps to ensure Cllr Taylor was aware that his behaviour was not acceptable.

- (c) Has there been a breach of trust?

It is apparent that Cllr Taylor has a difficult relationship with a number of the senior officers of the Council, in particular Steve Humphrey, Adrian Stanfield and Julie Bielby. Lindsay Pearson has now retired so any difficulty there is no longer relevant.

There appears to have been no loss of trust with other officers within the Council, and this is demonstrated to some extent by the email exchange with Glenda Egerton on 25 June at page 107 of the Schedule of Evidence and his explanation at pages 71 and 72 of the Schedule of Evidence.

Cllr Taylor characterises his relationship with officers generally as a good relationship, but at times "robust" (Interview, p58 of the Schedule of Evidence). However, it is clear that there is a loss of trust between Cllr Taylor and the three senior officers who have given evidence today. Given the very senior positions of the officers who Cllr Taylor has sought to impugn, and that this was done in a very public manner, I can only conclude that there has been a breach of trust.

- (d) Has there been financial impropriety?

There is no allegation or evidence of any financial impropriety by Cllr Taylor.

- (e) What was the result of failing to follow the code?

- *Cllr Taylor has publicly accused senior officers, including the Council's most senior solicitor, of lying*
- *These accusations were made to a global audience*
- *Such comments damage the reputation of the Council*
- *Comments of this nature also damage the reputation of Councillors generally*

- (f) How serious was the incident?

Given the identity of the officers subject to Cllr Taylor's comments, and the very public nature by which his allegations were made, the incident must be characterised as being particularly serious.

- (g) Does the Subject Member accept that they were at fault?

It is clear that Cllr Taylor believes his course of action was justified under the circumstances, and therefore does not accept that he is at fault.

(h) Did the Subject Member apologise to the relevant persons?

CLlr Taylor has already indicated that he will not apologise for his conduct.

(i) Has the Subject Member previously been reprimanded or warned for similar misconduct?

No.

(j) Has the Subject Member previously breached the Borough Council's code of Conduct?

No.

(k) Is there likely to be a repetition of the incident?

As the Subject Member has indicated a number of times, he believes that his conduct is "acceptable" and "justified" because of the way he feels he has been treated by officers of the Council. He says "respect needs to be earned" and as he sees it, the senior officers concerned have not earned that respect.

Even after being warned that his conduct was unacceptable, the conduct continued. Therefore there is a real risk that there could be further incidents of this nature.

The Right to Freedom of Political Expression

It is established through case law that imposing sanctions on a member can engage the Right to Freedom of Expression under Article 10 of the Convention on Human Rights. It is therefore necessary for the Panel to consider whether Article 10 is engaged in this case and if so, whether any interference is justified under the terms expressed in the HRA and Convention.

I will therefore need to make some rather technical submissions to you now regarding the law in this area. I apologise in advance that this is both technical and lengthy- but your legal adviser should be able to provide further guidance and this forms an important part of your consideration today.

I will begin by setting out the law, both in the Convention on Human Rights and as established through both European and British jurisprudence. I will then apply the law to the present circumstances in order to present you with my conclusions on how Art 10 impacts upon this case.

The right, according to Article 10(1) *"shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority..."*

Art 10(2) provides the circumstances where such rights can be interfered with. It says that *"the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society... for (inter alia) the protection of the reputation or rights of others."*

Under the European jurisprudence, the ECHR has said that *"while freedom of expression is important for everybody, it is especially so for an elected representative of the people..."*

The British Courts have also said that, when considering justification for interference under Article 10(2), “political expression” or “the expression of a political view” attract a higher degree of protection, whilst expressions in personal or abusive terms do not attract the same higher level of protection.

The ECHR draws a distinction between political expression and criticism of civil servants, which by extension must in my submission also apply to Council Officers exercising their official duties. In its judgement in *Janowski v Poland*, the Court said that:

“...It cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions. What is more, civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty...”

In considering whether a finding that a member has breached a code of conduct and/or any sanction imposed had contravened article 10, the Courts have established that there are 3 questions to be asked:

- (1) Was the tribunal entitled as a matter of fact to conclude that the Cllr’s conduct was in breach of the Code;
- (2) If so, was the finding in itself, or the imposition of a sanction prima facie a breach of article 10; and
- (3) If so, was the restriction involved one which was justified by reason of the requirements of article 10(2)

Turning to the facts of this case, on question (1), it can clearly be said on the evidence that the Panel in this case is entitled, as a matter of fact, to conclude that Cllr Taylor was in breach of the code in the manner already set out.

As to question (2), that finding is, prima facie a breach of Cllr Taylor’s Freedom of Expression. In essence, by saying he has breached the code by writing the emails and posting the website comments, the Council is interfering with Cllr Taylor’s right to impart information and ideas.

The third question therefore falls to be considered: firstly, to the finding of a breach, and second to any sanction.

In my submission, whilst general criticism of the Council (and to a lesser degree officers of the Council) could be said to be the expression of a political view thus attracting a higher degree of protection from interference, the same cannot be said of personal comments, such as “little devious tricks”, “you lot in the Developer’s pocket” and referring to an email from Mr Stanfield, publicly, as “bollocks”. In my view such comments do not attract that higher level of protection under Article 10.

Furthermore, the ECHR says that officials should be protected from such attacks, in other words that in order to allow an officer to do his job properly it may be more justifiable under Article 10(2) to restrict someone else’s freedom to impart information and ideas, in this case, Cllr Taylor’s.

In my submission therefore, the Panel is justified in interfering with Cllr Taylor's right to freedom of expression, by its finding of a breach, as that interference is necessary in a democratic society for the protection of the reputation or rights of others.

That third question also needs to be considered in relation to any sanction which the Panel might impose, and I turn now to those sanctions.

Sanctions

[IF BULLYING...:

Cllr Taylor's conduct has been found to fall well below the standard expected of a member. He has sought to intimidate and insult senior officers of the Council, in a concerted and public campaign against them. This cannot be considered as anything other than a very serious matter.

[IF DISREPUTE]

Cllr Taylor has called into question the integrity of the Council's senior officers in a public manner. Furthermore, he has impugned the professional standing of the Council's senior solicitor.

These are serious issues which clearly bring both the Council and Cllr Taylor's own office into disrepute.]

When advised about his conduct, Cllr Taylor considered this as "an attempt to silence him" and instead of heeding the advice, continued the offending behaviour.

Cllr Taylor appears to take some satisfaction in behaving in this manner, and it seems to be a matter of some pride from the tone of posts on his website, that his conduct has been under investigation.

Regardless of what Cllr Taylor believes might "justify" such behaviour, there are standards of conduct which are required of members, even in those circumstances.

Cllr Taylor has received advice on his conduct and it seems apparent that he has not and will not act on that advice. I do not, therefore, recommend training.

In my submission, the matter is not suitable for informal resolution.

Cllr Taylor has already indicated that he will not apologise, and therefore this is not available as part of the range of sanctions should the matter be considered appropriate for informal resolution.

I recommend, in the first instance, that a formal censure should be issued by the Council, reprimanding Cllr Taylor for his behaviour. In my submission this is proportionate and justified in the terms of Article 10(2) of the Convention.

The Council needs to make clear, in a public manner such that those who read or may read the BG News website will also be aware that the posts they have read, were inappropriate and constituted a breach of the members code of conduct. Therefore I also recommend that the findings of the Panel are published on the Council's website, and a press release is issued.

Cllr Taylor sits on two committees- Licensing and Appeals, and Area 2 Planning Committee. The offending behaviour arises directly from planning issues.

The Panel needs to consider whether, in light of the very serious nature of the breaches of the code, it is appropriate for Cllr Taylor to continue to sit on these committees. It is open to the Panel to recommend to Full Council that Cllr Taylor be removed from either one or both of these committees.

I have considered at length whether my representations to the Panel should advocate imposing such a sanction. However, on balance I have decided not to seek to influence the Panel in either direction. Instead, I ask the panel to consider the following 3 points as to whether the sanction is appropriate in this case:

- In light of the nature of the comments made by Cllr Taylor, and who they were made against, is any other sanction sufficiently punitive?
- Would any other sanction be effective in correcting the offending behaviour or sending the "right message" about serious breaches of the code?
- Given that the background to Cllr Taylor's comments about the officers stem from planning issues, is it appropriate for Cllr Taylor to continue to sit on that committee and be a decision maker in respect of planning matters?

In addition, the Panel must again give careful consideration whether imposing such a penalty and restriction on Cllr Taylor's political activity is justified in the terms of Article 10(2) of the Convention.

IN THE MATTER OF THE LOCALISM ACT 2011

STANDARDS HEARING PANEL RE: COUNCILLOR MIKE TAYLOR

LEGAL SUBMISSIONS ON THE RIGHT TO FREEDOM OF EXPRESSION UNDER ARTICLE 10 OF THE CONVENTION ON HUMAN RIGHTS

It is established through case law that imposing sanctions on a member can engage the Right to Freedom of Expression under Article 10 of the Convention on Human Rights. It is therefore necessary for the Panel to consider whether Article 10 is engaged in this case and if so, whether any interference is justified under the terms expressed in the HRA and Convention.

The right, according to Article 10(1) *“shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority...”*

Art 10(2) provides the circumstances where such rights can be interfered with. It says that *“the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society... for (inter alia) the protection of the reputation or rights of others.”*

Under the European jurisprudence, the ECHR has said that *“while freedom of expression is important for everybody, it is especially so for an elected representative of the people...”*¹

The British Courts have also said that, when considering justification for interference under Article 10(2), “political expression” or “the expression of a political view” attract a higher degree of protection, whilst expressions in personal or abusive terms do not attract the same higher level of protection.²

The ECHR draws a distinction between political expression and criticism of civil servants, which by extension must in my submission also apply to Council Officers exercising their official duties. In its judgement in *Janowski v Poland*³, the Court said that:

“...It cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions. What is more, civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty...”

In considering whether a finding that a member has breached a code of conduct and/or any sanction imposed had contravened article 10, the Courts have established⁴ that there are 3 questions to be asked:

- (1) Was the tribunal entitled as a matter of fact to conclude that the Cllr’s conduct was in breach of the Code;

¹ *Castells v Spain* (1992) 14 EHRR 445

² *R (Dennehy) v London Borough of Ealing* [2013] EWHC 4102 at para 24

³ ECHR Judgement, January 21, 1999

⁴ *Sanders v Kingston (No.1)* [2005] EWHC 1145 (Admin)

- (2) If so, was the finding in itself, or the imposition of a sanction prima facie a breach of article 10; and
- (3) If so, was the restriction involved one which was justified by reason of the requirements of article 10(2)

Turning to the facts of this case, on question (1), it can clearly be said on the evidence that the Panel in this case is entitled, as a matter of fact, to conclude that Cllr Taylor was in breach of the code in the manner already set out.

As to question (2), that finding is, prima facie a breach of Cllr Taylor's Freedom of Expression. In essence, by saying he has breached the code by writing the emails and posting the website comments, the Council is interfering with Cllr Taylor's right to impart information and ideas.

The third question therefore falls to be considered: firstly, to the finding of a breach, and second to any sanction.

In my submission, whilst general criticism of the Council (and to a lesser degree officers of the Council) could be said to be the expression of a political view thus attracting a higher degree of protection from interference, the same cannot be said of personal comments, such as "little devious tricks"⁵, "you lot in the Developer's pocket"⁶ and referring to an email from Mr Stanfield, publicly, as "bollocks"⁷. In my view such comments do not attract that higher level of protection under Article 10.

Furthermore, the ECHR says that officials should be protected from such attacks, in other words that in order to allow an officer to do his job properly it may be more justifiable under Article 10(2) to restrict someone else's freedom to impart information and ideas, in this case, Cllr Taylor's.

In my submission therefore, the Panel is justified in interfering with Cllr Taylor's right to freedom of expression, by its finding of a breach, as that interference is necessary in a democratic society for the protection of the reputation or rights of others.

Kevin Toogood

12 October 2015

⁵ JTG12, Borough Green News 30/6/2014 at page 112 of the Schedule of Evidence

⁶ Interview, page 60 of the Schedule of Evidence

⁷ JTG10, email 13 June 2014 at page 91 of the Schedule of Evidence