

TONBRIDGE & MALLING BOROUGH COUNCIL

JOINT STANDARDS COMMITTEE

16 January 2017

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 08/2015 – Leybourne Parish Council

- 1.2.1 On 24 November 2015, I received a complaint about the conduct of a Member of Leybourne Parish Council.
- 1.2.2 The complaint alleged that the Member in question had abused his position as a Parish Councillor during the period March/ April 2015 to November 2015.
- 1.2.3 The complaint passed the legal jurisdictional test in that I considered the conduct was capable of amounting to a breach of the Leybourne Parish Council Code of Conduct. If proven, it could have amounted to a failure to meet the following obligations.

“Member obligations

- (1) *He/ she shall behave in such a way that a reasonable person would regard as respectful*
- (2) *He/ she shall not act in a way which a reasonable person would regard as bullying or intimidatory :*

- 1.2.4 However, I considered that the complaint failed the local assessment criteria, for the following reasons
- (a) The issues were inherently related to the particular relationship that existed between the individual and the Parish Council;
- (b) The scenario that emerged from the paperwork was one of a dispute where both parties were aggrieved with the conduct of the other, with a number of

allegations and counter-allegations. This could reasonably be characterised as 'tit for tat' within paragraph (d) of the local assessment criteria.

1.2.5 No further action was therefore taken in respect of the complaint.

1.3 Complaint 01/2016 – Leybourne Parish Council

1.3.1 On 11 January 2016 I received a complaint about the conduct of a Member of Leybourne Parish Council.

1.3.2 The complaint alleged that the Councillor had breached the Leybourne Parish Council Code of Conduct by disclosing confidential information relating to an employee of the Council.

1.2.3 I considered that the conduct alleged in the complaint was capable of amounting to a breach of the Leybourne Code of Conduct in that if proven, it could amount to a failure to meet the obligation not to disclose information which is confidential or where disclosure is prohibited by law.

1.2.3 However, the complaint failed the local assessment criteria, for the following reasons

(a) The issues were inherently related to the particular relationship that existed between the individual and the Parish Council.

(b) There would be little benefit from an investigation or other action.

1.2.5 No further action was therefore taken in respect of the complaint.

1.3 Complaint 06/2015 – Wateringbury Parish Council

1.3.1 On 11 June 2015 I received a complaint about the conduct of a Member of Wateringbury Parish Council.

1.3.2 The complaint alleged that a Member of the Parish Council had failed to leave the room during an item of business in which he had declared an interest.

1.3.3 I considered that the complaint met the requirements of the Legal Jurisdictional test, in respect of that part of the complaint relating to the failure to notify the Monitoring Officer of an interest in a particular property. However, in relation to the local assessment criteria test, I considered that there was nothing further that could be gained from an investigation under the Code of Conduct.

1.3.6 In all the circumstances of the case I was of the view that the Subject Member may well have misunderstood the requirement to disclose their interest in the particular property. In such circumstances the most appropriate and cost effective way to resolve the complaint would be to resolve informally through the provision of training on the Code of Conduct.

1.3.7 I can confirm that this training has been provided.

1.4 Complaint 03/2016 – Wateringbury Parish Council

1.4.1 On 3 June 2016 I received a complaint about a Member of Wateringbury Parish Council.

1.4.2 The complaint alleged that the Councillor had breached the Wateringbury Parish Council Code of Conduct by disclosing confidential information.

1.4.3 I considered that the complaint failed the Legal Jurisdictional test, in that the conduct alleged was not capable of amounting to a breach of the Wateringbury Code of Conduct.

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

1.5 Complaint 04/2016 – Tonbridge and Malling Borough Council

1.5.1 On 27 July 2016 I received a complaint about a member of Tonbridge and Malling Borough Council .

1.5.2 The complaint alleged that the Councillor had breached the Tonbridge and Malling Code of Conduct by refusing to discuss the details of a planning application with the complainant, and by having a “closed mind” on the matter.

1.5.3 I considered that the complaint failed the Legal Jurisdiction test, in that the evidence suggested that the matters complained of were not substantiated and the conduct of the Councillor was unlikely to amount to a breach of the Code.

1.5.4 Furthermore, the complainant appeared to be unreasonably persistent and vexatious and consequently the complaint would also fail the local assessment criteria.

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

1.6 Complaint 05/ 2016 – Tonbridge and Malling Borough Council

1.6.1 On 27 July 2016 I received a complaint about a member of Tonbridge and Malling Borough Council.

1.6.2 The complaint alleged that the Councillor had breached the Tonbridge and Malling Code of Conduct by having been rude to the complainant and had discriminated against the complainant due to his political views. This was in the context of an exchange of emails.

1.6.3 I reviewed the exchange of emails and noted that the content and language used by both the complainant and Councillor was robust and forthright. I considered

that the Councillor's tone, whilst possibly disrespectful, was unlikely to amount to a breach of the code.

- 1.6.4 Additionally, there was no evidence which suggested that the Councillor would not take into account the views of the complainant, and as such there was no evidence of discrimination.
- 1.6.5 I therefore considered that the complaint failed the Legal Jurisdiction test, in that the evidence suggested the conduct in question was not capable of amounting to a breach of the code. Furthermore, the complainant appeared to be unreasonably persistent and vexatious and consequently the complaint would also fail the local assessment criteria.
- 1.6.6 The decision I therefore reached was that no further action should be taken in respect of this complaint.

1.7 Legal Implications

- 1.7 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.

1.8 Financial and Value for Money Implications

- 1.8.1 Nil arising from this report.

contact: Adrian Stanfield

Adrian Stanfield
Director of Central Services & Monitoring Officer