

TONBRIDGE & MALLING BOROUGH COUNCIL

HEARING PANEL OF THE JOINT STANDARDS COMMITTEE

12 June 2017

Report of the Monitoring Officer

Part 2 - Private

Delegated

LGA 1972 - Sch 12A Paragraph 1 and 2 – Information relating to an individual and information which is likely to reveal the identity of an individual

1 CODE OF CONDUCT COMPLAINT

Members are asked to consider the report of Mr Richard Lingard Solicitor in respect of a complaint made by Mrs Sheila Smith (Chair of Governors of Wrotham School) that Councillors Robin Betts, Harry Rayner and Mike Taylor have breached the Codes of Conduct of Wrotham Parish Council and Borough Green Parish Council.

1.1 Introduction

- 1.1.1 On 18 March 2016 I received a complaint from Mrs Sheila Smith, Chair of Governors of Wrotham School about the conduct of Cllrs Harry Rayner and Robin Betts (both of Wrotham Parish Council) and Cllr Mike Taylor (of Borough Green Parish Council).
- 1.1.2 The allegation concerns the alleged conduct of the 3 councillors during the afternoon of Friday 4 March 2016, when they attended at Wrotham School and asked to have a meeting with Mr Matthew Wright (Head Teacher of the School) about financial matters relating to the application of funds for the purchase of a boiler for the school changing rooms. The 3 councillors concerned all believed that the use of funds for such a purchase was contrary to the terms of a Community Use Agreement for the 3G Pitch facility at the school to which the school, Wrotham Parish Council and Borough Green Parish Council were all parties.
- 1.1.3 The complaint passed both of the initial assessment tests i.e. the legal jurisdiction test and the local assessment criteria test. Having consulted the Chairman, Vice-Chairmen and Independent Person(s), my view was that the complaint should proceed to investigation.

- 1.1.4 The investigatory functions in respect of this matter have been delegated to an independent investigator. Mr Lingard is a Solicitor and former Head of Legal & Democratic Services at Guildford Borough Council. He is experienced in acting as an independent investigator, and since 2011 has conducted and reported on 25 investigations covering allegations of misconduct.
- 1.1.5 A copy of Mr Lingard's report is attached as **Annex 1**. The report is confidential at this stage pursuant to paragraphs 1 and 2 of Schedule 12A to the Local Government Act 1972. As with all exempt information decisions, the Hearing Panel must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure. In most cases the public interest in transparent decision making by the Hearing Panel will outweigh the subject member's interest in limiting publication of an unproven allegation that has yet to be determined.
- 1.1.6 If the Hearing Panel is minded to hold the hearing in public, then copies of the Investigation Report will be distributed to any persons present, and published on the Council's website.
- 1.1.7 In summary Mr Lingard has concluded that there have been breaches of the Wrotham and Borough Green Parish Councils' Codes of Conduct on the part of Cllr Harry Rayner (Wrotham PC), Cllr Robin Betts (Wrotham PC) and Cllr Mike Taylor (Borough Green PC consisting of a failure to observe the following Member Obligations –
- (1) To behave in such a way that a reasonable person would regard as respectful; and
- (2) Not to act in a way which a reasonable person would regard as bullying or intimidatory
- Arising out of the manner in which each of them conducted themselves while on Wrotham School premises on the afternoon of Friday 4 March 2016.
- 1.1.8 Mr Lingard further concludes that there has been a breach of the Wrotham Parish Council Code of Conduct on the part of Cllr Harry Rayner consisting of a failure by him to observe the Member Obligation to behave in such a way that a reasonable person would regard as respectful arising out of the circulation of his email dated 9 March 2016.
- 1.1.9 Subsequent to the finalisation of the report Cllr Betts has sent written comments to Mr Lingard on its contents. These comments are attached as **Annex 2**.

1.2 Legal Implications

- 1.2.1 Section 28(4) of the Localism Act 2011 requires that "*a failure to comply with a relevant authority's code of conduct is not to be dealt with otherwise than in accordance with the arrangements made under subsection (6)...*"

- 1.2.2 Those arrangements are the “Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011” as adopted by the Council and attached to this report at **Annex 3**.
- 1.2.3 Therefore the entire procedure for dealing with the allegation is contained within those arrangements.
- 1.2.4 Paragraph 14 of the Arrangements provides that either a Hearing Panel or Monitoring Officer has *“the right to depart from these Arrangements, where considered expedient to do so in order to secure the effective and fair consideration of any matter.”*

1.3 Key Issues/ recommendations

- 1.3.1 The Panel are asked to consider whether
 - (1) Councillors Rayner and Betts have breached the provisions of the Wrotham Parish Council Code of Conduct; and
 - (2) Councillor Taylor has breached the provisions of the Borough Green Parish Council Code of Conduct.
- 1.3.2 The role of the Hearing Panel is to decide whether it agrees with the conclusions set out in the report of the Investigating Officer. The relevant standard of proof is the civil standard i.e. the balance of probabilities. This means that the Panel has to be satisfied that it is more likely than not that the Code in question has been breached.
- 1.3.3 If the Hearing Panel concludes that there has been a breach of the Code(s), the available sanctions are set out at paragraph 4 of the ‘Procedure for Investigating the Complaint’ at **Annex 3**.

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