

DECISION NOTICE
of Hearing Panel on 12 & 13 June 2017

Complaint No: 1/2016

On 12 & 13 June 2017, the Hearing Panel of the Joint Standards Committee of Tonbridge and Malling Borough Council (“**the Panel**”) and all of the Parish Councils within the administrative area of Tonbridge and Malling Borough Council (“**TMBC**”) considered a report of an investigation into the alleged conduct of Cllrs Harry Rayner, Robin Betts and Mike Taylor (together “**the Subject Members**”) in their capacity as members of Wrotham Parish Council (in respect of Cllrs Rayner and Betts) and Chairman of Borough Green Parish Council (in respect of Cllr Mike Taylor)

A general summary of the complaint is set out below

1. Complaint summary

- 1.1 The Complainant is Ms Sheila Smith (“**the Complainant**”), Chair of Governors of Wrotham School (“**the school**”)
- 1.2 The complaint concerned the alleged conduct of the Subject Members during the afternoon of Friday 4 March 2016, when they attended the school and asked to have a meeting with Mr Mathew 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 financial matters**”).
- 1.3 The Subject Members all believed that the use of funds for such a purpose was contrary to the terms of a Community Use Agreement (“**CUA**”) for the 3G Pitch facility at the school to which the school, Wrotham Parish Council and Borough Green Parish Council were all parties.
- 1.4 It was agreed by all that Cllr Rayner had attended the school around lunchtime on 4 March in order to arrange a meeting with Mr Wright to talk about the financial matters, and that school staff told Cllr Rayner that a meeting would not be possible that day because of Mr Wright’s other commitments. It was also agreed that, notwithstanding this, the Subject Members returned to the school (arriving separately) later in the afternoon to try and arrange a meeting with Mr Wright to discuss the financial matters.
- 1.5 It was alleged by the Complainant that the Subject Members, when in the school reception area and in front of school staff and a pupil, demanded a meeting with Mr Wright in a bullying manner. Mr Wright declined the meeting because he said that he had to go and collect his son from school. The Complainant alleges that Mr Wright did make assurances to them that a future meeting was being arranged so that the financial matters could be discussed. The Subject Members deny that such assurances were made.

- 1.6 It then became clear to Mr Wright when he exited the school reception area and walked into the school car park that, either by accident or design, Cllr Taylor's van was 'boxing in' his car and he consequently could not get out of his parking space to go and pick up his son. Mr Wright subsequently rang the police and asked the Subject Members to leave the school premises.
- 1.7 It is agreed that at some point Cllr Taylor became aware that his van was blocking Mr Wright's car but that he failed to move it. Cllr Taylor alleges that this was because he wanted to preserve evidence for when the police arrived. The police did not ultimately come to the school on the 4 March but did attend the school to take statements the following week.
- 1.8 A CCTV camera was in active operation in the school reception areas on 4 March, however, the footage was not preserved by the school and was therefore automatically overwritten after 6 days.
- 1.9 The investigatory functions in respect of the Complaint were delegated to an independent Investigating Officer, Mr Richard Lingard (solicitor) ("**the IO**")
- 1.10 The IO found that the Subject Members breached their respective Parish Council's Code of Conduct adopted under s.27 (2) of the Localism Act 2011 ("**the 2011 Act**") in the following ways:
- failure to behave in such a way that a reasonable person would regard as respectful; and
 - not to act in a way which a reasonable person would regard as bullying or intimidatory
- 1.11 At the beginning of the investigation, as confirmed at the Panel Hearing, Subject Members received a copy of Mr Wright's version of events which he had given to the Complainant and at its conclusion were given the opportunity to comment on the draft report before it was finalised.
- 1.12 The Complaint also related to an event on the 9 March 2016, however, it became clear upon consultation with the Independent Person ("**IP**") during the hearing that this event complained of had not passed the local assessment criteria preliminary test (see paragraph [1.4] of Annex 2 of TMBC's Arrangements for Dealing with Code of Conduct Complaints under s.28 (6) of the 2011 Act) and therefore could not proceed to be heard by the Panel. Consequently it forms no part of this Decision Notice and was not taken into account in making the decision.

2. Hearing

- 2.1 The Panel decided that the proceedings be heard publicly.
- 2.2 The Panel also decided to accept a written statement of evidence from Cllr Rayner made on 2 June 2017 and a Character Reference from a third party in relation to Cllr Betts submitted at the commencement of the hearing

- 2.3 The IO orally presented his report. He stated that he had thoroughly questioned everyone who was involved in the complaint and/or present at the school on 4 March. He confirmed that the Subject Members refused to be interviewed individually and answered all questions together.
- 2.4 The IO reiterated that his conclusions in the report had no regard to either the news article in the Sevenoaks Chronicle which appeared some days after the 4 March, or to the financial matters relating to the application of funds for the purchase of a boiler for the school changing rooms. The report was instead confined to the Subject Member's behaviour at the school on 4 March and whether it breached the relevant Codes of Conduct.
- 2.5 No witnesses were called from the school because the school staff had stated that they wanted to focus on running the school for the purposes of educating their pupils instead of attending the standards proceedings. The IO has no power to compel anyone to attend.
- 2.6 The IO was subsequently cross-examined at length by Peter Oldham QC, Counsel on behalf of Cllr Rayner. Mr Oldham alleged *inter alia* that the IO had failed to compare the account which Mr Wright gave to the Complainant with that which Mr Wright gave to the IO during the course of the investigation, that the IO had taken the Complainant's account as read, and that there had been a breach of natural justice in that the Subject Members were allegedly insufficiently aware of the case against them at the time when they were questioned by the IO.
- 2.7 Cllr Betts' questioning of the IO was focused upon what he perceived to be the IO's bias in favour of Mr Wright, the lack of CCTV available, and the fact that in his view he was not in a position to move Cllr Taylor's van or force Cllr Taylor to do so.
- 2.8 Cllr Taylor initially chose not to ask any questions of the IO but later asked a question expressing his concern that the IO was biased towards the school
- 2.9 When giving their evidence all the Subject Members set out the background to their concerns in relation to the financial matters which caused them to attend the school on the afternoon of 4 March. They all stated that they were respectful during their time on the school premises.
- 2.10 Cllr Taylor stated that he did not deliberately 'box in' Mr Wright's car with his van because he did not know what Mr Wright's car looked like.
- 2.11 The IO asked no questions of the Subject Members
- 2.12 In closing Mr Oldham on behalf of Cllr Rayner emphasised that the burden of proof rested on the Monitoring Officer to prove his case on the balance of probabilities and on that basis he had not done so because *inter alia* he had failed to call live evidence which could be tested by cross-examination, because of the school's failure to secure CCTV evidence of what occurred

despite the apparent seriousness of the incidents of the 4 March, and failings in the IO's investigating approach (e.g. the alleged failure to put the details of the complaint to the Subject Members or to properly check the Complainant's credibility). Mr Oldham also made submissions, supported by legal authority, in relation to Cllr Rayner's Article 10 (1) ECHR rights to freedom of expression and the enhanced protection afforded to political speech.

- 2.13 In closing Cllrs Taylor and Betts reiterated that by attending the school on 4 March they were acting in good faith based upon their concerns in relation to the financial matters

3. Independent Person's views

- 3.1 The IP stated that the financial matters were very important context for the Subject Members' behaviour on 4 March and drew the Panel's attention to emails between the Subject Members and other members of the Steering Group charged with the responsibility of overseeing the CUA
- 3.2 The IP also drew attention to the fact that the IO's report was not supported by live witness evidence which could be tested by the Subject Members and Panel and expressed his surprise and regret that the CCTV footage no longer existed.
- 3.3 The IP concluded that Cllr Taylor did not know his van was blocking Mr Wright's car and, in any event, Cllrs Rayner and Betts cannot be held responsible for what Cllr Taylor may have done or known.
- 3.4 The IP concluded that there were serious doubts as to whether the Subject Members had breached their respective Codes of Conduct.

4. Findings

- 4.1 The Panel had regard to all the evidence including the IO's report, the evidence given by the Subject Members both written and oral, and the views of the independent person.
- 4.2 The Panel considered the financial matters to have been useful background and contextual information only. It was not the job of the Panel to resolve whether the financial matters consisted of a misappropriation of funds or not. However it is clear that the Subject Members went to the school in good faith on the basis of their subjective concerns and that these concerns applied pressure to what took place on the afternoon of 4 March.
- 4.3 In respect of what happened in the school reception area the Panel decided that, without CCTV and live witness evidence, it had not been satisfied on the balance of probabilities that any of the Subject Members had acted in a disrespectful or bullying manner in their dealings with the school staff in the school reception.

- 4.4 However, in relation to what occurred outside the school reception, the Panel found that, by reason of his acts or his failure to act when he became aware that he was in fact blocking Mr Wright's car, Cllr Taylor did obstruct Mr Wright's car with his van and that this was not behaviour which the reasonable person would find respectful.
- 4.5 Cllr Taylor gave a number of excuses for why he did not remove his van including his alleged desire to preserve evidence for the police and the fact that he only "had a few minutes" to move it, however, the Panel considered that these reasons were either not credible or, if they were genuine, represented an error of judgment on the part of Cllr Taylor and that he should have moved his van regardless.
- 4.6 The Panel, therefore, found that Cllr Taylor had breached the Code of Conduct of Borough Green Parish Council. The Panel found no breach of the Code of Conduct of Wrotham Parish Council on the parts of Cllrs Betts and Rayner.
- 4.7 It is recognised that all the Subject Members were exercising their Article 10 (1) ECHR rights to freedom of expression when they attended the school and that their speech is afforded a higher degree of protection because of their status as Parish Councillors and the fact that they were speaking to matters which they considered to be in the public interest.
- 4.8 However Cllr Taylor's failure to move his van once he became aware that he was blocking Mr Wright's car was not political expression and, in any event and regardless of its status, it can and the Panel have decided it indeed should be limited by the Code of Conduct under Article 10 (2) ECHR in order to uphold proper standards in public life and to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy.
- 4.9 In relation to criticisms of the IO's methodology and any resulting breach of natural justice, the Panel are satisfied that there has been no such breach. The Subject Members had sufficient opportunity to know the case against them (e.g. they were sent a copy of Mr Wright's account of the events of 4 March which he had provided to the Complainant and which did not differ materially from the account which he gave to the IO during the investigation) and, in any event, were given ample opportunity to comment on the draft report before it was finalised.

5. Sanctions applied

- 5.1 Having found that there had been a breach of the Code of Conduct the adopted arrangements for dealing with complaints required that the Panel heard representations from the Monitoring Officer and the IP on whether there should be any sanctions imposed. The Panel was advised that the adopted arrangements for dealing with Hearings contained the range of possible sanctions which the Panel could make and noted that it was not entitled to apply or recommend any other sanctions.

5.2 In coming to its conclusions the Panel were mindful of the need to impose reasonable and proportionate sanctions. Additionally, the Panel had regard to the following according to the questions set out in paragraph [4.4] of Annexe 4 of TMBC's Arrangements for dealing with Code of Conduct Complaints:

- the fact that Cllr Taylor intended, by failing to move his van, that Mr Wright's car would be blocked in;
- the impact on Mr Wright was that he was seriously inconvenienced and consequently became agitated;
- the fact that Cllr Taylor does not accept fault for this breach and no apology has been given to anyone; and
- the fact that Cllr Taylor has previously breached the Code of Conduct of Borough Green Parish Council.

5.3 Having considered all of these matters, the Panel resolved to apply the following sanctions:

- the Panel's findings be reported to Borough Green Parish Council and the Parish Council be invited to issue Cllr Taylor with a formal censure for obstructing Mr Wright;
- a formal letter be sent to Cllr Taylor on behalf of the Panel;
- the Panel's findings be published as follows:
 - by publication on the TMBC website;
 - by email to the local Press;
 - by email to the Clerk and all members of Borough Green Parish Council.

5.4 In coming to its conclusions on these sanctions, the Panel again had regard to Cllr Taylor's Article 10 (1) ECHR right to freedom of expression. The Panel was satisfied that these sanctions were the minimum required to uphold the public interest in local government being conducted to standards which maintain public confidence.

5.5 For the avoidance of doubt the Panel did not take into account the outstanding complaint against Cllr Taylor referred to in the hearing.

6. Appeal

6.1 There is no right of appeal against this decision of the Panel

7. Notification of Decision

7.1 This decision notice is sent to:

- the Complainant
- Cllr Harry Rayner
- Cllr Robin Betts
- Cllr Mike Taylor
- Clerk to the Wrotham Parish Council
- Clerk to the Borough Green Parish Council

21 June 2017

Signed

A handwritten signature in black ink, appearing to read 'D. Davis', written in a cursive style.

Cllr Dave Davis

Chairman of the Hearing Panel

Tonbridge and Malling Borough Council