

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**JOINT STANDARDS COMMITTEE**

**05 March 2018**

**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 – Wrotham Parish Council/ Borough Green Parish Council**

- 1.2.1 On 18 March 2016, I received a complaint about the conduct of 2 Members of Wrotham Parish Council and 1 Member of Borough Green Parish Council.
- 1.2.2 The allegation concerned 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 the 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.
- 1.2.3 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.
- 1.2.4 The appointed investigator concluded that there had been breaches of the Wrotham and Borough Green Parish Councils' Codes of Conduct on the part of all 3 Councillors 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.

1.2.5 On 12 June 2017 the Standards Hearing Panel met to determine the allegations.

1.2.6 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. 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 the Head Teacher's car Cllr Taylor did obstruct the car with his van and that this was not behaviour which the reasonable person would find respectful.

1.2.7 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 the other 2 Councillors.

1.2.8 The Panel resolved to apply the following sanctions:

- (1) 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 the Head Teacher;
- (2) a formal letter be sent to Cllr Taylor on behalf of the Panel;
- (3) 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.

### **1.3 Complaint – Tonbridge & Malling Borough Council**

1.3.1 On 30 September 2017 I received a complaint about the conduct of a Member of Tonbridge & Malling Borough Council.

1.3.2 The complaint arose from alleged comments made by the Subject Member during the consideration of an item of business at the Area 2 Planning Committee on 27 September 2017.

1.3.3 It was alleged by the complainant that when he had finished his 3 minute address to the Committee, he asked to be allowed to finish his sentence, but was told his time was up. He then alleged he asked whether he could walk and talk, to which

the Subject Member allegedly replied 'Sit down, doesn't matter what you say, we won't be listening'.

1.3.4 I considered that the conduct alleged in the complaint was capable of amounting to a breach of the Tonbridge & Malling Borough Council Code of Conduct in that if proven, it could amount to a failure by a Member to meet the obligation not to conduct themselves in a manner which could reasonably be regarded as bringing their office or the Authority into disrepute.

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

- (a) The complaint was relatively minor and dealing with it would have a disproportionate effect on both public money and Officers' and Members' time (para (g) of local assessment criteria)).
- (b) The complaint was such that it was unlikely that an investigation would be able to come to a firm conclusion on the matter (para (j) of local assessment criteria)).

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

#### **1.4 Complaint – Tonbridge & Malling Borough Council/ Borough Green Parish Council**

1.4.1 On 22 March 2017 I received a complaint about a member of Tonbridge and Malling Borough Council/ Borough Green Parish Council.

1.4.2 The complaint alleged that the Councillor had breached the Borough Green Parish Council code of conduct through acts of bullying and/or intimidation towards the complainant.

1.4.3 I considered that the complaint presented prima facie evidence that the conduct was potentially sufficient to amount to a breach of the code. Having regard to the root cause of the complaint, I considered that informal resolution would be appropriate. The measures were (i) a limited apology; (ii) mediation; (iii) changes to Parish Council procedures; and (iv) amendments to content on the Councillor's personal website/ social media.

1.4.4 Only measure (iv) was followed. I received additional correspondence from the parties. I subsequently considered that the measures available to a hearing panel were unlikely to achieve any more successful resolution of the matter and concluded that no further action should be taken.

## **1.5 Complaint – Leybourne Parish Council**

- 1.5.1 On 9 November 2017 I received a complaint about a member of Leybourne Parish Council.
- 1.5.2 The complaint alleged that the Councillor had breached the Leybourne Parish Council Code of Conduct through acts of intimidation and harassment towards the complainant.
- 1.5.3 I considered that the complaint failed the legal jurisdiction test, as the Councillor in question had not been acting in an official capacity at the time of the alleged conduct. The Council had no jurisdiction to investigate the matter further.
- 1.5.4 The decision I therefore reached was that no further action should be taken in respect of this complaint.

## **1.6 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.

## **1.7 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