

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**JOINT STANDARDS COMMITTEE**

**12 June 2019**

**Report of the Monitoring Officer**

**Part 1- Public**

**Matters for Information**

**1 UPDATE – CODE OF CONDUCT COMPLAINTS 2018/19**

**Summary: This report updates Members on the complaints made to the Monitoring Officer that a Member may have failed to comply with his/ her authority's Code of Conduct.**

**1.1 Introduction**

1.1.1 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 the Monitoring Officer 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.

1.1.2 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 the Monitoring Officer and the complaint will be rejected.

A full copy of the adopted arrangements is included at **Annex 1**.

- 1.1.3 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.
- 1.1.4 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 – Wateringbury Parish Council**

- 1.2.1 The complaint in this case fell into two parts. The first limb of the complaint alleged that six members of the Parish Council had behaved in an undemocratic manner and went beyond acceptable canvassing for new members. The second limb alleged that unwarranted and personal attacks had been made against the complainant.
- 1.2.2 The complaint failed the legal jurisdiction test, on the grounds that it appeared to be a dispute between individuals about a parish council matter.
- 1.2.3 The decision I therefore reached was that the complaint should be rejected.

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

- 1.3.1 The complaint in this case was made against 2 Borough Councillors. It arose from an allegation that the Councillors both failed to reply to an email requesting their assistance in connection with road sweeping.
- 1.3.2 I was not satisfied that the requirements of the legal jurisdiction test were met. In particular I was not satisfied that a single isolated instance of a member failing to respond to a resident's email (and no evidence was given of any "chasing" or "reminder" email being sent) could amount to disreputable conduct. It also appears that the Subject Members were unable to respond, because of the lack of any reply address being provided by the Complainant, and reasonable enquiries were made by one of the Councillors to obtain contact details in order to reply.

1.3.3 The decision I therefore reached was that the complaint should be rejected.

#### **1.4 Complaint – Borough Green Parish Council**

1.4.1 The 2 complaints in this case alleged that a Parish Councillor had breached the Borough Green Parish Council Code of Conduct by (1) bringing the authority into disrepute and (2) behaving in an aggressive and threatening manner. The complaints arose out of an email sent by the Councillor in question to other Members of the Parish Council, in which it was alleged that the complainant had referred to the Councillor in offensive terms.

1.4.2 I considered that one of the complaints passed the legal jurisdiction test. The second complaint failed the test, as the complainant had not personally been the subject of any allegations in the email.

1.4.3 However, the first complaint failed the local assessment criteria, as it was unlikely that an investigation would be able to come to a firm conclusion on the matter.

1.4.4 The decision I therefore reached was that the complaint should be rejected.

#### **1.5 Complaint – Borough Green Parish Council**

1.5.1 The complaint in this case arose out of series of social media postings made by a member of the Parish Council, which began with a link to an article containing allegations against the complainant. The allegations were unproven at the time of posting the link and the complainant was subsequently cleared of any wrongdoing.

1.5.2 The complaint failed the Legal Jurisdiction Test, as I was not satisfied that the Councillor was acting in an official capacity at the time of the alleged conduct. The decision I therefore reached was that the complaint should be rejected.

#### **1.6 Legal Implications**

1.6.1 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**

1.7.1 None arising from this report.

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