

TONBRIDGE & MALLING BOROUGH COUNCIL

JOINT STANDARDS COMMITTEE

11 October 2021

Report of the Monitoring Officer

Part 1- Public

Matters for Information

1 UPDATE – CODE OF CONDUCT COMPLAINTS

Executive Summary

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 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 me in consultation with the Independent Person(s) and the Chair and Vice-Chair 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 me and the complaint will be rejected.

- 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 previously agreed by this Committee, personal details of Complainants or Subject Members are not published unless a complaint leads to investigation and public hearing before the Hearing Panel.
- 1.1.5 Save for the one complaint that was considered by the Standards Hearing Panel (see 1.2 below), details of the complaints received during 2021 are set out in the table attached at **Annex 1**.
- 1.1.6 14 further complaints are currently under consideration.

1.2 Standards Hearing Panel

- 1.2.1 On 29 April 2021 the Standards Hearings Panel met to consider a complaint about the conduct of Tony Petty, a member of Kings Hill Parish Council.
- 1.2.2 The complaint passed both of the initial assessment tests i.e. the legal jurisdiction test and the local assessment criteria test. Having consulted the Chair, Vice-Chair and Independent Person, my view was that the complaint should proceed to investigation.
- 1.2.3 The appointed investigator concluded that there had been breaches of the Kings Hill Parish Council Code of Conduct consisting of a failure to observe the following Member obligations:-

“When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations

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

- 1.2.4 The Investigating Officer made an oral presentation to the Panel regarding the complaint made by the complainant (the then Parish Clerk) about the conduct of Cllr Petty on a number of occasions between 17 March and 17 June 2020. The report concluded that, following the events of 17 March 2020, Cllr Petty had failed to treat the complainant with respect, to the extent that he bullied and intimidated her. The Investigators also found that Cllr Petty had subsequently criticised and challenged the complainant in an inappropriate manner with the intention to embarrass and demean her.
- 1.2.5 The Panel heard the views of the Independent Person, Mr D Mercier, who acknowledged Cllr Petty's decision to instruct his solicitors to provide his written statement but expressed concern that the only real evidence of the matters set out in the complaint was the account of the complainant set out in the Investigator's report. The Independent Person noted that, while refuting the account of the complainant, Cllr Petty had failed to provide any specifics relating to the conversations which had taken place. The Independent Person felt that the Cllr Petty's lack of engagement with the process may not have helped and believed that, on the balance of probabilities and in the absence of any real evidence to the contrary, there seemed to have been a breach in the Code.
- 1.2.6 The Panel had regard to all the evidence, including the Investigating Officer's report and the evidence given by Cllr Petty, both written and oral, and, having taken into account the views of the Independent Person, determined that it was more likely than not that the course of action taken by Cllr Petty towards the complainant was disrespectful and was intended to bully and intimidate her.
- 1.2.7 In reaching this view the Hearing Panel was aware of the enhanced protection given to freedom of political expression under the Human Rights Act 1998 and that, while its findings were likely to amount to a restriction on that freedom of expression by Cllr Petty, it was a necessary and proportionate interference to protect the rights and freedom of others.
- 1.2.8 The Panel therefore found that Cllr Petty had breached the Code of Conduct of Kings Hill Parish Council.
- 1.2.9 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 Independent Person on whether there should be any sanctions imposed. The Panel was advised that the Council's 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. In coming to its conclusions on the sanctions the Panel again had regard to the legal advice provided and was mindful of the need to impose reasonable and proportionate sanctions. Additionally the Panel had regard to the following factors:-

- (1) that Cllr Petty did not accept fault for the breach; and
- (2) that no apology had been given publically to anyone.

1.2.10 The Hearing Panel therefore resolved that the following sanctions be imposed

- (1) the Panel's Findings be reported to Kings Hill Parish Council;
- (2) a formal letter be sent to Cllr Petty on behalf of the Standards Hearing Panel; and
- (3) the Decision Notice be sent to Kings Hill Parish Council, Cllr Petty and the Complainant.

1.3 Legal Implications

1.3.1 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.

1.4 Financial and Value for Money Implications

1.4.1 Nil arising from this report.

contact: Adrian Stanfield

Adrian Stanfield
Monitoring Officer