

TONBRIDGE AND MALLING BOROUGH COUNCIL

STANDARDS HEARING PANEL

Thursday, 29th April, 2021

Present: Cllr Mrs P A Bates, Cllr D A S Davis, Cllr J L Sergison, Ms C Short (Addington Parish Council), Mr W E Stead (Burham Parish Council), Prof M McKinlay (Ryarsh Parish Council) and Mr D Mercier (Independent Person)

PART 1 - PUBLIC

SHS 21/1 ELECTION OF CHAIRMAN

RESOLVED: That Councillor J Sergison be elected as the Chairman for this meeting of the Standards Hearing Panel.

SHS 21/2 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

SHS 21/3 CONSIDERATION OF MATTERS IN PUBLIC

The Hearing Panel was invited to determine whether the confidential report of the Monitoring Officer could be considered in public. The Panel was advised that the Hearing should be held in public unless there was a good reason to exclude the public.

RESOLVED: That the Hearing be carried out in private, pursuant to paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972.

SHS 21/4 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

SHS 21/5 CODE OF CONDUCT COMPLAINT AGAINST A PARISH COUNCILLOR

The Hearing Panel of the Joint Standards Committee gave consideration to an allegation that a parish councillor had breached the Code of Conduct of Kings Hill Parish Council.

The Panel received the report of the external independent investigator (Investigating Officer), Mr A Oram of CH&I Associates, who had been appointed to carry out the investigation into the allegation. The report,

dated 29 March 2021, contained details of the relevant legislation and protocols, evidence gathered and witness statements made by and supporting the complainant. In addition to the Investigating Officer's report the Panel agreed to accept and have regard to a written statement received from the Solicitor to the Subject Member dated 16 March 2021 which had been circulated as a supplementary report in advance of the meeting.

The Investigating Officer made an oral presentation to the Panel regarding the complaint made by the complainant about the conduct of the Subject Member on a number of occasions between 17 March and 17 June 2020. The report concluded that, following the events of 17 March 2020, the Subject Member had failed to treat the complainant with respect, to the extent that he bullied and intimidated her. The Investigators also found that the Subject Member had subsequently criticised and challenged the complainant in an inappropriate manner with the intention to embarrass and demean her.

The Investigating Officer's report concluded that there had been breaches of the Kings Hill Parish Council Code of Conduct on the part of the Subject Member 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."

The Subject Member indicated that he had no questions to put to the Investigating Officer regarding his report.

The Panel heard the views of the Independent Person, Mr D Mercier, who acknowledged the Subject Member'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, the Subject Member had failed to provide any specifics relating to the conversations which had taken place. The Independent Person felt that the Subject Member'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.

The Panel had regard to all the evidence, including the Investigating Officer's report and the evidence given by the Subject Member, 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 the Subject Member towards the complainant was disrespectful and was intended to bully and intimidate her.

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 the Subject Member, it was a necessary and proportionate interference to protect the rights and freedom of others.

The Panel therefore found that the Subject Member had breached the Code of Conduct of Kings Hill Parish Council.

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

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 Councillor A Petty on behalf of the Standards Hearing Panel; and
- (3) the Decision Notice be sent to Kings Hill Parish Council, Councillor A Petty and the Complainant.

The meeting ended at 2.51 pm
having commenced at 9.30 am