

DECISION NOTICE OF HEARING PANEL

1. Introduction

- 1.1 On 29th April 2021, the Hearing Panel of the Tonbridge and Malling Joint Standards Committee considered a report of an independent investigation, carried out by CH&I Associates (“the Investigators”), into the alleged conduct of Kings Hill Parish Councillor Tony Petty.
- 1.2 The hearing was carried out in private, pursuant to paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972.
- 1.3 A general summary of the complaint is set out below.

2. Complaint Summary

- 2.1 Ms Julie Miller, Clerk to Kings Hill Parish Council (the Parish Council), submitted a complaint to the Monitoring Officer of Tonbridge & Malling Borough Council (the Borough Council) about the conduct of Councillor Anthony Petty, a member of the Parish Council.
- 2.2 In her complaint Ms Miller alleged that when she, as Clerk, challenged the lawfulness of a meeting that Councillor Petty had held on 17 March 2020, Councillor Petty verbally abused and threatened her, using foul and offensive language. Ms Miller also alleged that on more than one occasion since that incident, and despite being aware that her advice about the meeting was correct, Councillor Petty has continued to try and undermine her, including by publicly attacking her and making false assertions about her performance.
- 2.3 As part of the investigation, the Investigators considered whether by his conduct, Councillor Petty failed to behave in such a way that a reasonable person would regard as respectful and/or acted in a way which a reasonable person would regard as bullying or intimidatory.
- 2.4 The Investigators found that following the events of 17 March 2020, Councillor Petty failed to treat the Clerk with respect, to the extent that he bullied and intimidated her. They also considered that Councillor Petty had subsequently criticised and challenged Clerk in an inappropriate matter with intention to embarrass and demean.
- 2.5 The Investigators recommended that Councillor Petty be found to have failed to comply with paragraphs 1 and 2 of the Parish Council’s Code.

3. Consultation with Independent Person

- 3.1 The Independent Person understood that Cllr Petty was frustrated with the events of the 17th March 2020 and the position he had taken with regard to this. He noted that Cllr Petty had taken legal advice, and in consequence had instructed his solicitors to provide his evidence as a written statement from them. He had been entitled to do that.

- 3.2 However, this gave the IP some concern as the only real evidence of the matters set out in the complaint had been what was in the Investigator's report, which was the account of the clerk. The IP noted that Cllr Petty refuted that he said what was in that account, but that he failed to provide any specifics relating to the conversations which took place.
- 3.3 The IP felt that the lack of engagement with the process by Cllr Petty may not have helped, however the IP believed that on the balance of probabilities there seemed have been a breach of the code, in the absence of any real evidence to the contrary.

4. Findings

(a) The events of 17th March 2020

- 4.1 The Hearing Panel understood that the burden of proof was on the Monitoring Officer to demonstrate that the matters alleged had occurred "on the balance of probabilities" - that the matters alleged were *more likely than not* to have occurred on the evidence presented to them.
- 4.2 The Hearing Panel noted that the account of the complainant of the telephone conversation on 17th March was a contemporaneous one, and had been recounted to a colleague also contemporaneously. The complainant was an experienced Parish Clerk and would understand the importance of having accurate and contemporaneous notes of conversations particularly where matters of procedure and lawfulness were being discussed with her.
- 4.3 Conversely, Cllr Petty had no contemporaneous account and had failed throughout the investigation to give any convincing account of what he considered had happened. Cllr Petty's written statement from his solicitors expressly stated that "*such language was not used/directed at Julie Miller in the way she alleges*" however, Cllr Petty did admit during discussion with the panel that he "*probably*" had used "*the words or words to that effect*" if not the words alleged. There had clearly been a heated conversation. It was more likely than not that during the conversation on 17th March Cllr Petty had used the words and phrases alleged in the complaint.

(b) The events of 25th March 2020 to 17 June 2020

- 4.4 Government guidance concerning the need to "stay at home" at the beginning of the Covid-19 pandemic had been issued prior to Cllr Petty's visit to the complainant's home. However, at that time there was no legal requirement to adhere to these rules. The visit therefore had taken place before there was any legally enforceable "lockdown". The visit had, however, taken place against the background of the guidance and the national message to "stay at home".
- 4.5 The parish council office had been closed, but it appeared to be contrary to "normal practice" for Cllr Petty to have sought to deliver acceptance of office forms to the Clerk at home instead of simply posting them through the parish council office door. The Hearing Panel noted that when asked, Cllr Petty had complied with the Complainant's request that

he should leave. However, it was clear that there had been a further heated exchange between the complainant and Cllr Petty.

4.6 The visit had taken place when Cllr Petty should have known that there was a pending national lockdown and that the public had already been told not to travel. He could have sought to make separate arrangements for delivery of the forms but had not done so. Instead, he had arrived unannounced at the complainant's home.

4.7 Following this meeting Cllr Petty emailed the complainant, some parish councillors and other members of the public in which he made a number of comments about the complainant's ability as a Parish Clerk. In a public meeting on 6th May he accused the complainant of not sending him an invitation to that meeting (which he subsequently apologised for by email to the clerk on 7th May). In a further public meeting on 17th June Cllr Petty again questioned the advice which the complainant had given to the Parish Council regarding quorum, asking *"why did the Clerk say only three Cllr were needed to have this meeting to interview candidates when now we are being told its four?"* The minutes of the meeting record that *"Cllr Petty repeatedly asked for confirmation that the clerk's advice was incorrect and asked for a formal reply."*

4.8 The hearing panel considered that, when the evidence was considered as a whole, there was more likely than not a course of conduct by Cllr Petty towards the complainant which was disrespectful and was intended to bully and intimidate the complainant.

4.9 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, that its findings were likely to amount to a restriction on that freedom of expression by Cllr Petty, but that it was a necessary and proportionate interference to protect the rights and freedoms of others- in particular in this case the complainant who at all times was acting as a public official and was therefore afforded protection from unwarranted comments that could or may have an adverse effect on good administration.¹

5. Sanctions Applied

5.1 The hearing panel decided that the following sanctions would be imposed:

- 5.1.1 The decision of the panel would be reported to the Parish Council;
- 5.1.2 A formal letter would be sent to Cllr Petty

6. Appeal

There is no right of appeal against the Hearing Panel's decision

¹ Heesom v Public Service Ombudsman for Wales [2014] EWHC 1504 (Admin)

7. Notification of Decision

This decision notice is sent to:
Kings Hill Parish Councillor Tony Petty
The Complainant
The Clerk to Kings Hill Parish Council

8. Additional Help

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language- please contact our Customer Services Team.

Approved by and issued on behalf of:

Date: 14 May 2021

Janet Sergison

Chairman of the Joint Standards Committee Hearing Panel
Tonbridge and Malling Borough Council