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CODE OF CONDUCT COMPLAINT – INITIAL ASSESSMENT DECISION

Parties should take care when passing on information that is in the notice or about the notice. For example, some details such as names and addresses may be confidential or private in nature, or may be personal information.

Complaint

During July 2021 I received 11 complaints about Cllr [REDACTED] of Borough Green Parish Council. All of the complaints relate to the same subject matter and were therefore considered together.

A general summary of the complaints is set out below.

Complaint summary

The complaints arise out of a dispute between Borough Green Parish Council and a local landowner. The Parish Council were in negotiations with the landowner to settle the dispute when it is said that the landowner suddenly disengaged and pursued legal action. In response the Parish Council instructed a Solicitor of their own, which was said to be expensive because it was not covered by insurance.

The Parish Council were said to have conducted their discussions about this case under Part 2 in confidence (Public Bodies Admission to Meetings Act 1960).

On 3 June 2021 the Solicitors for the Parish Council received a letter from BDB Pitmans (Solicitors for the landowner), indicating that they had been contacted directly by another Parish Councillor expressing their concern at the actions of a member of the Parish Council in respect of this matter, and encouraging that a claim of misfeasance in public office be pursued.

The solicitor for the Parish Council outlined his concerns in a letter dated 1 July 2021. In that letter the Solicitor advised:-

- That the actions of the mole had 'significantly undermined' the defence of the case;
- The mole's behaviour had damaged the Parish Council's financial interests because it had resulted in the Parish Council having to settle at a much higher level, both in terms of damages and costs than would otherwise have been the case and there is no doubt that the mole's actions have encouraged the claimant to pursue a level of damages and costs to which they should not have been entitled.

The letters from the respective Solicitors were shared with Members of the Parish Council at a meeting on 5 July 2021. At that meeting it is alleged that Councillor [REDACTED] stated that he had contacted BDB Pitmans and discussed the case with them encouraging a particular outcome.

On 12 August 2021 the Monitoring Officer informed Cllr [REDACTED] of the complaints against him and invited him to submit any initial views in writing by no later than 26 August. Cllr [REDACTED] submitted an email in response, which was considered as part of the initial assessment. Cllr [REDACTED] also supplied the Monitoring Officer with his preliminary responses to the specific complaints made by the Clerk and one other Councillor. These were also taken into consideration as part of the initial assessment.

Cllr [REDACTED] refuted the allegations made in the complaints. He contended:-

- The complaints arise as a result of the unlawful activities of Cllr Taylor and subsequent provision of misleading information, resulting in the conferment of a public benefit to himself to the detriment of Borough Green Parish Council;
- He denied breaching any Part 2 confidentiality;
- He denied that he has conferred a benefit on anyone.

On 4 March 2013 Borough Green Parish Council adopted a new Code of Conduct. The code follows the template prepared by the NALC Code of Conduct for Members.

It was alleged in the complaints that Cllr Perry had breached the following member obligations set out in the Code of Conduct

'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 –

- 3. He/ she shall not seek to improperly confer an advantage or disadvantage on any person'*
- 5. He/she shall not disclose information which is confidential or where disclosure is prohibited by law.*

Consultation with Independent Person, and Chairman & Vice-Chairman of the Joint Standards Committee

On 01 October 2021 the Monitoring Officer met with Councillor Janet Sergison (Chair of the Joint Standards Committee), Councillor Dave Davis (Vice-Chair) and David Mercier (Independent Person) to seek their views on the initial assessment of the complaint. Copies of the relevant paperwork were circulated to the above persons in advance of the meeting.

Decision

Having consulted and taken into account the views of the Independent Person and Chair and Vice-Chair of the Joint Standards Committee, the Monitoring Officer decided to refer the complaint for investigation.

Potential breaches of the Code of Conduct identified

At this stage in the process, the Monitoring Officer is not required to determine whether there *has* been a breach of the code. Rather, the test he is required to apply under the Legal Jurisdiction test is this - 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?

The complaint satisfied both the legal jurisdiction test and the local assessment criteria test as set out in the Borough Council's adopted arrangements.

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following paragraphs of the Borough Green Parish Council Code of Conduct

'Member obligations

3. *He/ she shall not seek to improperly confer an advantage or disadvantage on any person'*

6. *He/she shall not disclose information which is confidential or where disclosure is prohibited by law.*

Please note that it will be for the Investigating Officer to determine which paragraphs are relevant, during the course of the investigation.

In relation to the local assessment criteria, the Monitoring Officer considers that the nature of the allegations in this case are serious enough, if proven to justify action by the Joint Standards Committee.

Notification of decision

This decision notice is sent to Mr [REDACTED] and to the complainants.

What happens now

The complaint will now be investigated under the Borough Council's Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011.

Appeal

There is no right of appeal against the Monitoring Officer's decision.

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.

Signed:

Adrian Stanfield

Date 08 October 2021

Print name: Adrian Stanfield

Monitoring Officer of the Tonbridge and Malling Borough Council

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