



## CODE OF CONDUCT COMPLAINT

### DECISION NOTICE

*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

On 16 July 2024 the Monitoring Officer received a complaint about Cllr Taylor of Borough Green Parish Council. The complaint was made by Mr [REDACTED], a local resident.

### Complaint summary

Mr [REDACTED]'s complaint relates to the alleged disclosure of his identity by Cllr Taylor via the Parish Council agenda. His grievance is that Cllr Taylor managed to identify him as the person who made a complaint to the Borough Council about a planning enforcement matter and then used this information to reveal his identity through the Parish Council agenda.

Item 6 of the Parish Council minutes dated 1<sup>st</sup> July 2024 states

*Surgery Parking- the single MOP who complained has now lodged complaints with Planning Enforcement. I have checked the site and there has been no damage to the main root system of the TPO Limes. Surgery may have to apply for Planning Permission for the two roadway lights. New parking signs ordered.*

As the only person who had previously complained to the Parish Council about the planning matter in question, Mr [REDACTED] feels aggrieved that he has been 'directly implicated' by the publication of the above.

On 9<sup>th</sup> August 2024 the Monitoring Officer wrote to Cllr Taylor to inform him of the complaint made against him and invited him to submit any initial views in writing.

Cllr Taylor denies that he was able to identify Mr [REDACTED] as the person who made a complaint to the Borough Council. Whilst Mr [REDACTED] did attend the Annual Meeting of the Parish Council on 13 May 2024 and direct certain accusations towards the Parish Council, Cllr Taylor asserts that no information about the identity of the complainant was provided to him by officers of the Borough Council, nor did he find out. However, he goes on to comment that 'Anyone with a grain of common sense could work out that the person who harangued the Parish Council meeting about tarmacking the greenbelt was in all likelihood the same person who lodged the complaint, but we did not know.'

The Monitoring Officer made some initial enquiries with the Head of Planning Services who confirmed that no details were passed to anyone, including Cllr Taylor. The planning enforcement team do not disclose details of the complainant as part of the investigation. Mr

■■■■ made a separate complaint to the Borough Council under the Council's general complaints procedure and was advised of the above. He was also advised to raise the matter with the Parish Council or the Information Commissioner.

### **The Code**

Borough Green Parish Council adopted the National Association of Local Councils model Code of Conduct for members as amended, under the provisions of the Localism Act 2011.

Mr ■■■■ has not identified an obligation in the Members Code of Conduct that he feels has been breached. He instead alleges that this is a breach of Borough Council's privacy notice and a breach of confidentiality.

The Monitoring Officer considers that the following obligations within the Borough Green Parish Council Code of Conduct may be relevant:-

### **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.*
2. *He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.*
3. *He/she shall not seek to improperly confer an advantage or disadvantage on any person.*
4. *.....*
5. *He/she shall not disclose information which is confidential or where disclosure is prohibited by law.*

### **Consultation with the Chair & Vice-Chair of the Joint Standards Committee and Independent Person**

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, the complaint is to be assessed by the Monitoring Officer in consultation with the Independent Person and the Chair and Vice-Chair of the Joint Standards Committee.

Paragraph 2.1. of the 'Procedure on receipt of a complaint' requires that complaints are assessed against the legal jurisdiction test in paragraph 2.2 and, if applicable, the local assessment criteria in paragraph 2.4.

The legal jurisdiction test contains 6 elements. If a complaint fails one or more of the jurisdiction tests, no further action will be taken and the complaint will be rejected.

<p><b>Did the alleged conduct occur before the adoption of the Code of Conduct?</b></p> <p><b>If the answer to this is 'Yes' the test is failed</b></p>	<p>No</p>
<p><b>Was the person complained of a member of the Borough or Parish Council at the time of the alleged conduct?</b></p> <p><b>If the answer to this is 'No' the test is failed</b></p>	<p>Yes</p>
<p><b>Was the person complained of acting in an official capacity at the time of the alleged conduct?</b></p> <p><b>If the answer to this is 'No' the test is failed</b></p>	<p>Yes</p>
<p><b>Did the alleged conduct occur when the person complained of was acting as a member of another authority?</b></p> <p><b>If the answer to this is 'Yes' the test is failed</b></p>	<p>No</p>
<p><b>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?</b></p> <p><b>If the answer to this is 'No' the test is failed</b></p>	<p>At this stage in the initial assessment process, the Monitoring Officer is not required to determine if there <i>has</i> been a breach. Rather, the test is whether the alleged conduct is <i>capable</i> of amounting to a breach of the code. The question is therefore whether Cllr Taylor's conduct is capable of amounting to a breach of the code of conduct.</p> <p>Whilst Cllr Taylor's contention that the Parish Council did not know that the complainant was Mr [REDACTED] is inconsistent with the specific words used in the minutes i.e. <i>the single MOP who complained has now lodged complaints with Planning Enforcement</i>, the appropriateness of identifying an individual in this way is not</p>

	<p>primarily a matter for the Code of Conduct. If Cllr Taylor/ Borough Green Parish Council have processed Mr █████'s personal data contrary to the Data Protection Act 2018/ UK GDPR then that is a matter for the Information Commissioner.</p> <p>The Borough Council's privacy notice is not relevant unless personal data has been processed by Council staff in breach of the terms of the notice. Even if it has, that would again be a matter for the Information Commissioner rather than the ethical standards complaints process.</p> <p>However, if Cllr Taylor had managed to obtain confidential information from the Borough Council as alleged and then used that to identify an individual within the Parish Council minutes then this could potentially amount to a breach of one or more of the general obligations set out in paragraph 1.2.3.</p>
<p><b>The complaint is about dissatisfaction with the Borough or Parish Council's decisions, policies and priorities, etc</b></p> <p><b>If the answer to this is 'Yes' the test is failed</b></p>	<p>Arguably it is the actions of the Parish Council that are under scrutiny here, as the reference to the single MOP appeared in minutes produced by the Parish Council rather than Cllr Taylor. Mr █████ alleges that Cllr Taylor was instrumental in the production of those minutes, and it was he who obtained information from the Borough Council in order to identify him in the minutes.</p>

The complaint therefore passed the Legal Jurisdiction Test within the adopted arrangements for dealing with complaints.

If a complaint satisfies the legal jurisdiction test, the Monitoring Officer is then required to apply the following local assessment criteria test –

- (a) The complaint is substantially the same as a complaint which has previously been made.
- (b) The complaint is anonymous, unless the Monitoring Officer is of the view, on the basis of corroborating evidence that it is in the public interest to accept the complaint. The Monitoring Officer may consult the Independent Person and the Chair/ Vice-Chair of the Joint Standards Committee.
- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant.
- (d) The complaint is malicious or relatively minor, and, in the view of the Monitoring Officer, the public interest would not be served by taking further action.
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious.
- (f) The alleged misconduct happened more than 3 months prior to the submission of the complaint.
- (g) Dealing with the complaint would have a disproportionate effect on both public money and/or officers' and Members' time.
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action.
- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken.
- (j) 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.
- (k) The complaint is about a deceased person.
- (l) The complaint is about a person who is no longer a Borough or Parish Councillor or Co-opted Member.

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.

The view of the Monitoring Officer is that paragraphs (d), (g) and (i) are relevant. The Planning Services team have already confirmed that no information was passed to Cllr Taylor (or anyone else) about the identity of the complainant in this matter. This accords with Cllr Taylor's response to the complaint. In all likelihood Cllr Taylor made the assumption that Mr [REDACTED] was the complainant in light of his previous attendance at the Annual meeting of the Parish Council. Whilst the Monitoring Officer sympathises with Mr [REDACTED]'s frustration at the reference in the Council minutes (which suggests something more than a mere suspicion) the Monitoring Officer does not consider that anything would be gained by further action.

It would be preferable for the future if the Parish Council could in future refrain from making public their suspicions as to the identity of complainants.

## **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 reject the complaint.

## **Notification of decision**

This decision notice is sent to:

- Mr [REDACTED]
- Cllr Taylor
- Clerk to Borough Green Parish Council

### **Appeal**

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

Signed: *Adrian Stanfield* Date **11 September 2024**  
Print name: **Adrian Stanfield**

Monitoring Officer of the Tonbridge and Malling Borough Council

Gibson Building

Gibson Drive

Kings Hill

West Malling

Kent ME19 4LZ