



**North Tyneside Council**

# Standards Sub- committee

Saturday, 25 November 2023

**Friday, 1 December 2023** 0.02 Chamber – Quadrant, The Silverlink North, Cobalt Business Park, North Tyneside, NE27 0BY **commencing at 1.30 pm.**

<b>Agenda Item</b>	<b>Page</b>
<b>1. Apologies for Absence</b>	
To receive apologies for absence from the meeting.	
<b>2. Appointment of Substitute Members</b>	
To be notified of the appointment of any Substitute Members.	
<b>3. Declarations of Interest</b>	
You are invited to declare any registerable and/or non-registerable interests in matters appearing on the agenda, and the nature of that interest.	
Please complete the Declarations of Interests card available at the meeting and return it to the Democratic Services Officer before leaving the meeting.	
You are also invited to disclose any dispensation from the requirement to declare any registerable and/or non-registerable interests that have been granted to you in respect of any matters appearing on the agenda.	

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**4. Exclusion Resolution**

The Standards Sub-committee is requested to consider passing the following resolution:

“That under Section 100A(4) of the Local Government Act 1972 (as amended) and having applied a public interest test as defined in Part 2 of Schedule 12A of the Act, the press and public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in Paragraphs 1of Part 1 of Schedule 12A to the Act.”

**5. Code of Conduct for Members' and Co-opted Members -  
Complaint NT14.2022-23 and NT15.2022-23**

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**Circulation overleaf ...**

**Members of the Standards Sub-committee**

Councillor Frank Lott (Chair)

Councillor Tracy Hallway (Deputy  
Chair)

Councillor Lewis Bartoli

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# North Tyneside Council Report to Standards Sub-Committee Date: 1 December 2023

## ITEM 2

Title: Standards  
Committee Hearing into  
Allegation of Breach of  
the Members' Code of  
Conduct

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**Report Author:** Stephen Ballantyne, (0191) 643  
Head of Law and Monitoring Officer 5329

**Wards affected:** All

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### 1.0 Purpose of Report

1.1 To present a report of the Investigating Officer in relation to an alleged breach of the Members' Code of Conduct in relation to Complaint NT14.2022-23 and NT15.2022-23.

### 2.0 Recommendation(s)

(1) The Standards Sub-Committee is required to decide whether the Member, against whom the allegations have been made, has breached the Code of Conduct in relation to each complaint; and

(2) If a breach is found, to determine what, if any, sanction should be imposed.

### 3.0 Information

3.1 The Standards Sub-Committee is required to consider the completed investigation report from the Investigating Officer in respect of the following complaints: NT14.2022-23 and NT15.2022-23.

3.2 In considering the Investigating Officer's report the Sub-Committee will be required to determine whether or not the Member has failed to follow the Authority's adopted Members' Code of Conduct and, if so, what penalty should be applied, if any.

3.3 The Sub-Committee should act in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Member on the balance of the information available to it, and may commission further investigation or information if it needs to do so in order for it to come to a decision. The Sub-Committee's role is governed by the Authority's Local Arrangements for dealing with Complaints against Members.

3.4 Attached as Appendix A is the Procedure to be followed for the Hearing.

3.5 Attached as Appendix B is the Pre-Hearing Process Summary in relation to complaint NT14.2022-23.

- 3.6 Attached as Appendix C is the Pre-Hearing Process Summary in relation to complaint NT15.2022-23.
- 3.7 Appendix D is the Investigating Officer's report in relation to Complaints NT14.2022-23 and NT.15.2022-23.

#### **4.0 Appendices (if any)**

Appendix A - Hearing Procedure

Appendix B - Pre-Hearing Process Summary for Complaint NT14.2022-23

Appendix C - Pre-Hearing Process Summary for Complaint NT15.2022-23

Appendix D - Investigating Officer's Report

#### **5.0 Background Information**

North Tyneside Council Constitution

North Tyneside Council Members' Code of Conduct

# Procedure for Standards Hearings

## 1. Introduction

This Appendix details the procedure to be adopted for the hearing of complaints by the Standards Committee or Standards Sub-Committee ('the Standards Committee') of North Tyneside Council where an investigation has been completed.

The person(s) making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member.

The Investigating Officer means the Monitoring Officer or other person appointed by the Monitoring Officer to conduct a local investigation in relation to a matter referred to the Monitoring Officer for local investigation.

References to Monitoring Officer include any other person appointed by the Monitoring Officer to carry out the functions of the Monitoring Officer.

The Chair of the Standards Committee's primary responsibility is to ensure that a hearing is conducted in a fair yet timely manner and to minimise delay in reaching a decision on a complaint. The Chair of the Standards Committee may decide that a hearing of a complaint will proceed in the absence of a relevant party where the Chair is of the view that it is proper to proceed and to prevent unreasonable delay.

The Complainant and the Member are recommended to read this procedure alongside the Guidance published by the Local Government Association "Guidance on Local Government Association Model Councillor Code of Conduct" <https://local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct> and the Association's Guidance "Guidance on Member Model Code of Conduct Complaints Handling" <https://www.local.gov.uk/publications/guidance-member-model-code-conduct-complaints-handling>

## 2. Legal Advice to the Standards Committee

Where the Monitoring Officer also takes the role of the Investigating Officer, he/she must arrange for a separate legal adviser for the Standards Committee in respect of the allegation.

## 3. Notifying the Member and Complainant

The Monitoring Officer shall send a copy of the Investigating Officer's final report to the Member, the Complainant and the Independent Persons.

The Monitoring Officer will ask for a written response from the Member within 14 days, stating whether or not s/he:

- disagrees with any of the findings of fact in the report, including the reasons for any disagreements;
- wants to be represented, at his/her own expense, at the hearing by a solicitor, barrister or any other person;
- wants to give evidence to the Standards Committee, either verbally or in writing;
- wants to call relevant witnesses to give evidence to the Standards Committee;
- wants any part of the hearing to be held in private;
- wants any part of the report or other relevant documents to be withheld from the public

See Forms A to E at Appendix 6.

The Monitoring Officer will also inform the Member that if, at the meeting of the Standards Committee, s/he seeks to dispute any matter contained in the report, without having previously notified his/her intention to do so, the Standards Committee may either adjourn the meeting to enable the Investigating Officer to provide a response, or refuse to allow the disputed matter to be raised.

The Monitoring Officer will also seek the views of the Independent Persons on the report and on any action the Independent Persons feel should be taken in respect of it.

Upon receipt of the responses, the Monitoring Officer will discuss the responses of with the Chair of the Standards Committee and will complete the Pre-hearing Process Summary at Appendix 7.

The Member and the Investigating Officer are entitled to request that any witnesses they want should be called. However, the Chair of the Standards Committee, following advice from the legal adviser, may limit the number of witnesses, if he/she believes the number requested is unreasonable or that some witnesses will simply be repeating the evidence of earlier witnesses, or else will not provide evidence that will assist the Committee to reach its decision.

Nothing in this procedure shall limit the Chair of the Standards Committee from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Standards Committee to reach its decision.



The Chair of the Standards Committee, in consultation with the legal adviser will then:

- confirm a date, time and place for the hearing, which must be within three months from the date that the report was completed;
- confirm the main facts of the case that are agreed;
- confirm the main facts that are not agreed;
- confirm which witnesses will give evidence;
- outline the proposed procedure for the hearing, specifying which parts, if any, will be considered in private; and
- request the Monitoring Officer to provide this information, with the Agenda, to everyone in the hearing at least two weeks before the proposed date of the hearing.

#### **4. The Standards Committee**

The Standards Committee shall decide on the balance of probability, whether the grounds of the complaint are upheld. It shall do so by considering the report and, where appropriate, written or oral representations made by the Member, and any additional relevant information from the Investigating Officer or witnesses.

Each Standards Committee member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast. If there are equal numbers of votes for and against, the Chair will have a second or casting vote. There is no restriction on how the Chair chooses to exercise a casting vote.

The meeting of the Standards Committee will be open to the public and press unless confidential information or exempt information under Schedule 12A of the Local Government Act 1972 is likely to be disclosed.

#### **5. Procedure at the Hearing**

The initial order of business at the meeting shall be as follows:

- declarations of interest;
- consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present;
- introductions;
- any representation from the Investigating Officer and/or the Member as to reasons why the Standards Committee should exclude the press and public and determination as to whether to exclude the press and public. Where the Standards Committee decides that it will not exclude press and public, the

Monitoring Officer shall at this point provide copies of the agenda and reports to any members of the press and public who are present.

The purpose of the hearing is to test the robustness of the report, by examining the reasoning contained within the report and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Standards Committee based on seeking information in order to identify potential flaws in the report and to clarify issues. The Standards Committee will control the procedure and evidence presented at the hearing, including the questioning of witnesses.

The Standards Committee may at any time seek legal advice from its legal adviser. Such advice will on all occasions be given in the presence of the Investigating Officer and the Member.

The procedure at the hearing will be as follows, subject to the Chair of the Committee being able to make changes as he or she thinks fit in order to ensure a fair and efficient meeting.

#### Examination of report and written representations

The Panel will consider the report together with any written response from the Member to the report. The Committee may require the Investigating Officer to answer questions put to him/her by members regarding the contents of the report.

The Committee must also take account of the views expressed by the Independent Persons in their response to the Monitoring Officer.

#### Oral evidence

If there is any disagreement as to the facts of the case, the Investigating Officer will be invited to make any necessary representations to support the relevant findings of fact in the report, calling supporting witnesses as agreed by the Chair.

Questions may be asked by the Committee at any point. The Member will not be permitted to directly question the Investigating Officer or the witnesses he/she calls.

If the Member wishes to challenge any oral evidence being presented, then these questions shall be directed through the Chair.

The Member will then be invited to make any necessary representations to support their version of the facts, calling supporting witnesses as agreed by the Chair.

Questions may be asked by the Committee/Sub-Committee at any point. The Investigating Officer will not be permitted to directly question the Member or the witnesses he/she calls. If they wish to challenge any oral evidence being presented, then these questions must be directed through the Chair.

Where the Member seeks to dispute any matter in the report which he/she had not given notice of intention to dispute in his/her written statement in response, the

Investigating Officer shall draw this to the attention of the Standards Committee/Sub-Committee. The Standards Committee may then decide:

- not to admit such dispute but to proceed to a decision;
- to admit the dispute, but to invite the Investigating Officer to respond
- to adjourn the meeting to enable the Investigating Officer to investigate and report on the dispute

Where appropriate the Investigating Officer will make representations on behalf of the Complainant to the Standards Committee/Sub-Committee.

The Standards Committee/Sub-Committee may adjourn the hearing to require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Committee/Sub-Committee.

#### Decision by the Standards Committee

The Standards Committee will consider in private session which of the following findings to adopt:

- that there is no evidence of any failure to comply with the Code of Conduct;
- that the Member has failed to comply with the Code of Conduct, but that no action needs to be taken;
- that the Member has failed to comply with the Code of Conduct and that a sanction should be imposed.

The available sanctions are: -

- (i) Issue a formal censure;
- (ii) Report its findings in respect of the subject member's conduct to full Council
- (iii) Recommend to the subject member's group leader (or in the case of un-grouped members, recommend to full Council) that they be removed from any or all Committees or Sub-Committees of the Authority;
- (iv) Recommend to the Elected Mayor that the subject member be removed from positions of responsibility for a specified period;
- (v) Instruct the Monitoring Officer to arrange training for the subject member;
- (vi) Recommend to full Council that the subject member be removed from all outside appointments to which they have been appointed or nominated by the Authority;
- (vii) Recommend to the Mayor that the subject member be removed from all outside appointments to which they have been appointed by the Mayor;
- (viii) Recommend to full Council that it withdraws facilities provided to the subject member by the Authority for a specified period, such as a computer, website and/or email and internet access;
- (ix) Recommend to full Council that it excludes the subject member from the Authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending full Council, a

- Committee or Sub-Committee meeting and/or restricts contact with officers to named officers only;
- (x) If relevant recommend to the secretary or appropriate official of a political group that the member be removed as group leader or other position of responsibility.

In deciding what sanction (if any) to take, the Standards Committee/Sub-Committee will consider all relevant circumstances including any views expressed by the Independent Persons.

The Standards Committee/Sub-Committee will then resume the public session and the Chair will announce the decision and the reasons for that decision.

If the matter is a complicated one, where the complaint has a number of aspects, the Standards Committee/Sub-Committee can decide to consider the evidence and reach a finding on each aspect separately.

The Standards Committee/Sub-Committee will then consider in open session whether there are any recommendations which it wishes to make arising from consideration of the allegation.

#### Notice of findings

The Monitoring Officer will make a short written decision available on the day of the hearing and a full written decision in draft will be prepared as soon as possible.

Within two weeks of the end of the hearing, the Monitoring Officer will circulate a full written decision, to the Member and the Complainant.

At the same time the Monitoring Officer shall arrange for a summary of the findings to be published as may be directed by the Standards Committee/Sub-Committee.

Where the Standards Committee/Sub-Committee determines that there has not been a breach of the Code of Conduct, the notice shall:

- state that the Standards Committee/Sub-Committee found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and not be published if the Member so requests;

Where the Standards Committee/Sub-Committee determines that there has been a failure to comply with the Code of Conduct, but no action is required, the notice shall:

- state that the Standards Committee found that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure specify the details of the failure; and give reasons for the decision reached;

Where the Standards Committee/Sub-Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:

- state that the Standards Committee/Sub-Committee found that the Member had failed to comply with the Code of Conduct;
- specify the details of the failure;
- give reasons for the decision reached; and
- specify the sanction imposed

Copies of the agenda, reports and minutes of a hearing, as well as any background papers, apart from sections of documents relating to parts of the hearing that were held in private, will be available for public inspection for six years after the hearing.

#### Confidentiality and disclosure of information

Where the Chair of the Standards Committee/Sub-Committee considers that the report and/or any of the written statements in response are likely to disclose any exempt information and in consequence that it is likely that the Standards Committee/Sub-Committee will, during consideration of these matters, not be open to the public, he/she shall instruct the legal adviser to not provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.

The Hearing will be held in public except for those parts of its proceedings which involve exempt information and during the deliberations of the Standards Committee/Sub-Committee.

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## **NORTH TYNESIDE COUNCIL STANDARDS SUB-COMMITTEE**

### **PRE-HEARING PROCESS SUMMARY**

<b>Member subject of allegation:</b>	Councillor Olly Scargill
<b>Complainant(s):</b>	Councillor Willie Samuel
<b>Case Reference Numbers:</b>	NT14.2022-23
<b>Chair for meeting:</b>	Councillor F Lott
<b>Independent Persons:</b>	Dr S Green, Mr D Entwisle, Mrs K Roffe
<b>Monitoring Officer:</b>	Mr S Ballantyne
<b>Investigating Officer:</b>	Mr Melvin Kenyon
<b>Democratic Services Officer:</b>	Ms J Holmes
<b>Time, Date and Place of Hearing:</b>	To be confirmed following consultation with the Chair of the Standards Committee.
<b>Time, Date and Place of Pre-Hearing Process Summary Meeting:</b>	11.30am, Friday 25 August 2023, Quadrant East, the Silverlink North, Cobalt Business Park

#### **Summary of allegation:**

The complainant, Councillor Willie Samuel, alleges that:

- a. Councillor Olly Scargill deliberately sought to bring the Authority into disrepute by posting a video of the Elected Mayor on his political Facebook page and misrepresenting the context of her comments. The Mayor was speaking in a debate about standards of conduct by members of the Authority. Councillor Samuel claims that the way in which the video has been posted implies that the Mayor's speech related to a different debate on

cycling infrastructure and a new roundabout at Rake Lane which Cllr Scargill had been speaking against.

- b. Councillor Scargill in making the post encouraged abusive comments and “negative perceptions about the Elected Mayor” did so for political gain and is a breach of the Code of Conduct for Members.
- c. The posting of “a heavily edited and doctored clip of the Mayor’s speech” by Councillor Scargill was designed to bring the office of Elected Mayor into disrepute. Councillor Samuel also claims that the edited video clip had removed the part of the Mayor’s speech in which she acknowledged that most Conservative Members acted with integrity and that the video clip has had effects added and to include sinister music and the fading of the video from colour to black and white.
- d. The “doctoring” of the video by Councillor Scargill means that he has shown no respect to the Mayor and that the Mayor’s comments have been taken out of context.
- e. Councillor Scargill in editing the “official record” of the Council meeting was intending to bring the Mayor, and by implication the Authority, into disrepute.
- f. The comments added to Councillor Scargill’s Facebook page after the posting of the video referring to the Mayor’s appearance and age were not been “disowned” by Councillor Scargill and goes beyond “normal political discourse”.

### **Relevant Paragraph(s) of the Code of Conduct**

The relevant paragraphs of the Code are:

Part 1 – General Conduct

#### 1. Respect

As a member:

1.1 You must treat other members and members of the public with respect.

#### 5. Disrepute

As a member:



5.1 You must not do anything to bring your role or the Authority into disrepute.

## 7. Use of the Authority's resources and facilities

As a member:

7.1 You must not misuse the Authority's resources.

7.2 You must, when using the Authority's resources or authorising their use by others: -

- a. Act in accordance with the Authority's requirements; and
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Authority or of the office to which you have been elected or appointed.

### **Findings of fact in the Investigating Officer's report that are disagreed with**

- a. Councillor Scargill completely refutes the issues raised in the standards complaint from Cllr Samuel and that of Mr and Ms Austin in their independent, but linked complaint (NT.15.2022-23).
- b. Councillor Scargill says that all of the complainants stood against Conservative candidates in the May 2022 local elections and he sees the complaints as a continuation of a politically-motivated attack.
- c. Councillor Scargill refutes that in his post he claimed that the Mayor was speaking on a different motion and believes that the Investigator has misunderstood this aspect of the complaint.
- d. Councillor Scargill denies that the Mayor's reputation has been damaged by the video posted by him and any reputational damage caused to her was caused by her comments when she was "attacking" two young Members.

Councillor Scargill has not provided completed Forms A to E which are model response forms provided for subject members who wish to challenge the findings of an Investigating Officer.

FORM A - Subject Member's response to the evidence set out in the Investigation Report

FORM B - Other evidence relevant to the allegation

FORM C – Representations to be taken into account if a Member is found to have failed to follow the Council’s Code of Conduct

FORM D – Arrangements for the Standards Committee Hearing

FORM E – Details of proposed witnesses to be called.

A summary of findings is contained in section 1.3 of the Investigation Report.

### **Application of the Code of Conduct**

The Independent Investigator considered that when Councillor Scargill was making his comments on his Facebook page and posting the edited video clip of the Mayor’s speech he was commenting on matters relating to the Authority and the role of the Elected Mayor at the Council meeting on 21 July 2022 he was acting in his capacity as a Councillor when making those comments.

- **Treating Others With Respect**

The Investigator found that Councillor Scargill **has** breached the Code in relation to:

Part 1 – General Conduct, Paragraph 1 and the need to treat others with respect, including Authority officers and other elected members. (para 1.3).

Councillor Scargill has failed to treat the Elected Mayor with respect.

- **Bringing the Authority into Disrepute**

The Investigator found that Councillor Scargill **has** breached the Code in relation to:

Part 1 – General Conduct, Paragraph 5 and Members not doing anything to bring their role or the Authority into disrepute. (para 1.3).

Councillor Scargill has brought his role as Councillor into disrepute.

- **Use of Authority Resources**

The Investigator found that Councillor Scargill **has** breached the Code in relation to:

Part 1 - General Conduct, Paragraph 7 not using the Authority's resources and facilities for political purposes unless that use could be regarded as being likely to facilitate, or be conducive to, the discharge of the functions of the Authority or the office to which a Councillor has been elected.

Councillor Scargill misused an Authority resource, namely, the Authority's Youtube footage of the Council meeting of the 21 July 2022 by failing to ensure that the resource was not used for political purposes.

**Matters taken into account by the Investigating Officer:**

- The written complaint submitted by Councillor Samuel as well as discussions with Councillor Samuel (para 7.3) and Councillor Scargill (para 7.5).
- The Authority's Youtube recording of the Council meeting on 21 July 2022. (para 8.2.5) including the debate on Motion 3 - the issue of honesty, integrity and respect in politics, on Motion 5 - Dutch<sup>2</sup> style roundabouts and a suggestion that there should be no further such constructions and a further suggestion that a referenda be held on any future cycling schemes.
- The Facebook comments and the video clip posted by Councillor Scargill and subsequent comments made by third parties on that Facebook page (para 8.2.5).
- Those other documents and sources listed in Appendix 1 of the Investigation Report.
- Article 10 of the European Convention on Human Rights – which is an individual's qualified right to freedom of expression and the judgment in *Heesom v Public Service Ombudsman for Wales* and the principles established by the High Court in that judgment. This includes an enhanced freedom of expression being afforded to politicians (para 8.2.1).
- Article 10 does not protect statements that are made which are known to be false and this was taken into account when balancing the right of freedom of expression against the Code of Conduct and the need to show respect (para 8.2.1).
- Councillor Scargill knew it to be false to suggest to readers of his Facebook post that the Mayor was attacking him for "standing up for his residents". As Cllr Scargill knew his comments to be false, his comments are not protected by Article 10 and a restriction on his freedom of expression is justified (para 8.3 1.)
- The Mayor has a right to be protected from hatred and discrimination (para 8.3 1.).

- It appears indisputable that the video clip taken from the Full Council meeting on 21 July 2022 has had “special effects” added to it and that those special effects present the Elected Mayor in a negative manner with the presumed aim of securing political advantage (para 8.2.5).
- Cllr Scargill did not deny that he had added music and subtitles to the video footage before publishing it though he had said in his response to the Complaints (see Section 5.4) that “the clip of the Elected Mayor’s speech has no content added or removed”. (para 8.2.5).
- Councillor Scargill said that the editing of the Youtube footage was “the sort of tactics that are used in politics nationally” and that it was the role of the opposition to “to scrutinise, to campaign and to agitate” and was attempting to introduce a comedic element to the footage that he posted by his editing, (para 8.2.5).
- It is indisputable that the Mayor’s speech has been edited at the beginning when she made “respectful” comments about Conservative Councillors and that the remaining content could be seen as being repurposed for political ends and to portray the Mayor’s comments as a standalone contribution that was nothing more than a personal attack on Cllr Scargill.
- Councillor Scargill in suggesting that the Mayor was attacking him for “standing up for his residents” was “misleading those who read his post” and his subsequent comments made to third parties on his Facebook page also made that assertion (para 8.2.5).
- The edited footage was taken out of context and had to be viewed alongside the initial Facebook comment made by Councillor Scargill, the third-party comments to what he had posted and Councillor Scargill’s replies to those posts and his failure to moderate some of the comments that were being made about the Mayor. (para 8.2.5).
- That in relation to the element of the investigation into the use of the Authority’s resources for political purposes the Investigator had regard to the Advice of leading Counsel in that regard. (para 8.3 4.).

### **Attendance at the hearing (including representatives)**

It is unknown if Councillor Scargill will be present at the hearing or if a representative will be appointed to act on his behalf.

Mr Melvin Kenyon, the Independent Investigating Officer, will be present at the hearing in order to present his report.

## **Witnesses Attending**

It is unknown if Councillor Scargill intends to call witnesses.

The Investigating Officer has not requested the attendance of any witnesses.

## **Hearing Procedure:**

The full procedure for the Hearing as agreed by the Chair is attached.

In summary, the Hearing will progress through the following stages and will include the consideration of any comments made by the Authority's appointed Independent Persons, as appropriate: -

- 1.) Introductions and preliminary procedural issues including consideration of any requests for the hearing to be held in full or in part in private.
- 2.) Pre-Hearing Process Summary.
- 3.) Presentation of Investigating Officers Report including witnesses.
- 4.) The Members response including witnesses.
- 5.) Withdrawal of Committee to determine Findings of Fact, whether a breach has occurred and any sanction to be imposed.

In relation to point 1 above, the Hearing will be advised of email correspondence from Councillor Bones sent on behalf of Councillor Scargill received on 24 August 2023. In that correspondence Councillor Bones suggested that the complaint against Councillor Scargill was out of time because the hearing of the complaint had not been concluded within 3 months of the completed investigation report being provided to him. The report had been sent to him on 22 May 2023. In making this suggestion Councillor Bones referred to a provision in the Authority's Local Arrangements document at page 36. This correspondence was shared with the Chair at the Pre-Hearing Process meeting and will be shared with the Standards Committee/Sub-Committee at the hearing.

In the Pre-Hearing Process meeting the Monitoring Officer referred to the correspondence that had been undertaken between his Office and Councillor Scargill during the period from the completion of the report up to and including the day immediately before the Pre-Hearing Process meeting in relation to receiving from Councillor Scargill his response to the Investigation report and the completion of Forms A to E and to the extensions in time to provide that information which had been afforded to Councillor Scargill.

The Monitoring Officer advised the Chair that the Local Arrangements document provided that the Pre-Hearing process was predicated on engagement by the subject member of the complaint. In particular, on Page 35 it provided that "Upon the receipt of responses, the Monitoring Officer will discuss the responses with the Chair of Standards Committee and will complete the Pre-Hearing process". It was noted that the Arrangements document expected a response from the Subject Member and the completion of Forms A to E within 14 days of the completed Investigation report being provided to them. Of course, Members were also required in accordance with the Paragraph 8 of the General Conduct section of the Code to co-operate not just with any investigation but also enabling a matter to proceed to a hearing.

The Monitoring Officer advised the Chair that the Local Arrangements and the process set out therein and adopted by the Authority aims to be fair to both the Subject Member and the Complainant and must, comply with the rules of natural justice so as to ensure a fair hearing is undertaken. This was why at Councillor Scargill's request the investigation report following its completion had been subsequently reviewed by the Monitoring Officer to address particular concerns that Councillor Scargill had raised in relation to how the complaint against him had been dealt with in contrast to issues he had raised about the Elected Mayor's use of Council resources. The Monitoring Officer was of the view that Councillor Scargill's request for a review had paused time between 26 May and 12 June (at the earliest), the latter date being the date that the Monitoring Officer concluded his review although there was an argument that the pause extended to 24 July 2023 as there had been subsequent correspondence following the outcome of the review being communicated to Councillor Scargill.

In the Pre-Hearing Process meeting the Monitoring Officer also advised the Chair that the Local Arrangements document specifically provided on Page 8 at Paragraph 15 the following:

"The Standards Committee/Sub-Committee, on the advice of the Monitoring Officer, may depart from these arrangements where it is necessary to do so in order to secure the effective and fair consideration of any matter."

Furthermore, that Paragraph 8 of the Code of Conduct placed an obligation on all Members of the Council to "cooperate with any Code of Conduct investigation and/or determination".

The Chair noted the situation.

In the light of the circumstances detailed above the Monitoring Officer advised the Chair that he was of the view that it would be improper if the complaint against Councillor Scargill did not proceed to a hearing just because it had not been heard within three months of the completion of the investigation report should it not be heard before 12 September (being 3 months from 12 June 2023). The Chair noted the advice and then determined to proceed to undertake the Pre-Hearing review.

The Chair was advised that when the Standards Committee/Sub-Committee is called to hear this matter as a preliminary matter the Committee/Sub-Committee will be apprised of this issue and asked, if necessary, to formally depart from the arrangements with respect to the timescale to allow the hearing to proceed.

**Date Pre-Hearing Process Summary Completed:**



**Signed** \_\_\_\_\_

**Councillor Frank Lott**  
**Chair of the Standards Committee**

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## **NORTH TYNESIDE COUNCIL STANDARDS SUB-COMMITTEE**

### **PRE-HEARING PROCESS SUMMARY**

<b>Member subject of allegation:</b>	Councillor Olly Scargill
<b>Complainant(s):</b>	Ms Alison Austin and Mr Frank Austin
<b>Case Reference Numbers:</b>	NT15.2022-23
<b>Chair for meeting:</b>	Councillor F Lott
<b>Independent Persons:</b>	Dr S Green, Mr D Entwisle, Mrs K Roffe
<b>Monitoring Officer:</b>	Mr S Ballantyne
<b>Investigating Officer:</b>	Mr Melvin Kenyon
<b>Democratic Services Officer:</b>	Ms J Holmes
<b>Time, Date and Place of Hearing:</b>	To be confirmed following consultation with the Chair of the Standards Committee
<b>Time, Date and Place of Pre-Hearing Process Summary Meeting:</b>	11.30 am, Friday, 25 August 2023, Quadrant East, the Silverlink North, Cobalt Business Park

#### **Summary of allegation:**

The complainants, Mr and Ms Austin, allege that:

- a. Councillor Olly Scargill posted an edited video clip of the remarks made by the Elected Mayor during the debate on a Motion at Council on 21 July 2022 (the complaint incorrectly refers to 22 July 2022) regarding honesty, integrity and respect in politics. The complainants say that the “clip” was shown out of its true context and that Councillor Scargill described a false context when posting the video clip. The editing of the footage included the Mayor’s speech and subtitles of what she was saying.

- b. The assertion made by Councillor Scargill in his Facebook page entry on 26 July 2022 when he posted the video clip that the comments made by the Mayor at the Council meeting were in relation to his campaign about a roundabout and an A and E Department was “utterly false”. He was aware that the Mayor’s comments related to the Motion on integrity in politics and not his campaign.
- c. Following the publication of the video clip a “large number” of people commented on Councillor Scargill’s post, some of those comments were personally abusive and threatening towards the Mayor.
- d. Rather than asking those making abusive and personal attacks on the Mayor to stop, Councillor Scargill “pasted” the same response to some commentators stating that the Mayor’s comments were in response to his election campaign which was against a “Dutch-style roundabout” and the building of 3,000 homes on green space and 24 hour care at Rake Lane.
- e. It is said that although Councillor Scargill voted in favour of the Motion regarding the “return of honesty and integrity in politics” a few days after that vote he posted on his Facebook page an edited video of the Mayor’s speech ascribing a false context to her remarks.
- f. Councillor Scargill has shown total disregard for the issue of the safety of councillors and candidates from online abuse and even physical threats and attacks and has shown contempt for the Authority and elected members in making his post.
- g. The Authority cannot exercise its<sup>2</sup> duty of care towards elected members if one of member is using “lies and deceit to stir up bad feeling against others”.
- h. Councillor Scargill has failed to treat the Elected Mayor with respect, has brought his role of Councillor into disrepute be deliberately misleading the public and bringing the Authority into disrepute.

## **Relevant Paragraph(s) of the Code of Conduct**

The relevant paragraphs of the Code are:

Part 1 – General Conduct

### 1. Respect

As a member:

1.1 You must treat other members and members of the public with respect.

### 5. Disrepute

As a member:

5.1 You must not do anything to bring your role or the Authority into disrepute.

### 7. Use of the Authority's resources and facilities

As a member:

7.1 You must not misuse the Authority's resources.

7.2 You must, when using the Authority's resources or authorising their use by others: –

- a. Act in accordance with the Authority's requirements; and
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Authority or of the office to which you have been elected or appointed.

## **Findings of fact in the Investigating Officer's report that are disagreed with**

- a. Councillor Scargill completely refutes the issues raised in the standards complaint from Mr and Ms Austin and that of Councillor Samuel in his independent, but linked complaint (NT14.2022-23).
- b. Councillor Scargill says that all of the complainants stood against Conservative candidates in the May 2022 local elections and he sees the complaints as a continuation of a politically-motivated attack.

- c. Councillor Scargill refutes that in his post he claimed that the Mayor was speaking on a different motion and believes that the Investigator has misunderstood this aspect of the complaint.
- d. Councillor Scargill denies that the Mayor's reputation has been damaged by the video posted by him and any reputational damage caused to her was caused by her comments when she was "attacking" two young Members.

Councillor Scargill has not provided completed Forms A to E which are model response forms provided for subject members who wish to challenge the findings of an Investigating Officer.

FORM A - Subject Member's response to the evidence set out in the Investigation Report

FORM B - Other evidence relevant to the allegation

FORM C - Representations to be taken into account if a Member is found to have failed to follow the Council's Code of Conduct

FORM D - Arrangements for the Standards Committee Hearing

FORM E - Details of proposed witnesses to be called.

A summary of findings is contained in section 1.3 of the Investigation Report.

### **Application of the Code of Conduct**

The Independent Investigator considered that when Councillor Scargill was making his comments on his Facebook page and posting the edited video clip of the Mayor's speech he was commenting on matters relating to the Authority and the role of the Elected Mayor at the Council meeting on 21 July 2022 he was acting in his capacity as a Councillor when making those comments.

- **Treating Others With Respect**

The Investigator found that Councillor Scargill **has** breached the Code in relation to:

Part 1 – General Conduct, Paragraph 1 and the need to treat others with respect, including Authority officers and other elected members. (para 1.3).

Councillor Scargill has failed to treat the Elected Mayor with respect.

- **Bringing the Authority into Disrepute**

The Investigator found that Councillor Scargill **has** breached the Code in relation to:

Part 1 – General Conduct, Paragraph 5 and Members not doing anything to bring their role or the Authority into disrepute. (para 1.3).

Councillor Scargill has brought his role as Councillor into disrepute.

- **Use of Authority Resources**

The Investigator found that Councillor Scargill **has** breached the Code in relation to:

Part 1 – General Conduct, Paragraph 7 not using the Authority’s resources and facilities for political purposes unless that use could be regarded as being likely to facilitate, or be conducive to, the discharge of the functions of the Authority or the office to which a Councillor has been elected.

Councillor Scargill misused an Authority resource, namely, the Authority’s Youtube footage of the Council meeting of the 21 July 2022 by failing to ensure that the resource was not used for political purposes.

**Matters taken into account by the Investigating Officer:**

- The written complaint submitted by Councillor Samuel as well as discussions with Councillor Samuel (para 7.3) and Councillor Scargill (para 7.5).
- The Authority’s Youtube recording of the Council meeting on 21 July 2022. (para 8.2.5) including the debate on Motion 3 – the issue of honesty, integrity and respect in politics, on Motion 5 – Dutch<sup>+</sup> style roundabouts and a suggestion that there should be no further such constructions and a further suggestion that a referenda be held on any future cycling schemes.
- The Facebook comments and the video clip posted by Councillor Scargill and subsequent comments made by third parties on that Facebook page (para 8.2.5).
- Those other documents and sources listed in Appendix 1 of the Investigation Report.
- Article 10 of the European Convention on Human Rights – which is an individual’s qualified right to freedom of expression and the judgment in

Heesom v Public Service Ombudsman for Wales and the principles established by the High Court in that judgment. This includes an enhanced freedom of expression being afforded to politicians (para 8.2.1).

- Article 10 does not protect statements that are made which are known to be false and this was taken into account when balancing the right of freedom of expression against the Code of Conduct and the need to show respect (para 8.2.1).
- Councillor Scargill knew it to be false to suggest to readers of his Facebook post that the Mayor was attacking him for “standing up for his residents”. As Cllr Scargill knew his comments to be false, his comments are not protected by Article 10 and a restriction on his freedom of expression is justified (para 8.3 1.)
- The Mayor has a right to be protected from hatred and discrimination (para 8.3 1.).
- It appears indisputable that the video clip taken from the Full Council meeting on 21 July 2022 has had “special effects” added to it and that those special effects present the Elected Mayor in a negative manner with the presumed aim of securing political advantage (para 8.2.5).
- Cllr Scargill did not deny that he had added music and subtitles to the video footage before publishing it though he had said in his response to the Complaints (see Section 5.4) that “the clip of the Elected Mayor’s speech has no content added or removed”. (para 8.2.5).
- Councillor Scargill said that the editing of the Youtube footage was “the sort of tactics that are used in politics nationally” and that it was the role of the opposition to “to scrutinise, to campaign and to agitate” and was attempting to introduce a comedic element to the footage that he posted by his editing, (para 8.2.5).
- It is indisputable that the Mayor’s speech has been edited at the beginning when she made “respectful” comments about Conservative Councillors and that the remaining content could be seen as being repurposed for political ends and to portray the Mayor’s comments as a standalone contribution that was nothing more than a personal attack on Cllr Scargill.
- Councillor Scargill in suggesting that the Mayor was attacking him for “standing up for his residents” was “misleading those who read his post” and his subsequent comments made to third parties on his Facebook page also made that assertion (para 8.2.5).
- The edited footage was taken out of context and had to be viewed alongside the initial Facebook comment made by Councillor Scargill, the third-party comments to what he had posted and Councillor Scargill’s

replies to those posts and his failure to moderate some of the comments that were being made about the Mayor. (para 8.2.5).

- That in relation to the element of the investigation into the use of the Authority's resources for political purposes the Investigator had regard to the Advice of leading Counsel in that regard. (para 8.3 4.).

### **Attendance at the hearing (including representatives)**

It is unknown if Councillor Scargill will be present at the hearing or if a representative will be appointed to act on his behalf.

Mr Melvin Kenyon, the Independent Investigating Officer, will be present at the hearing in order to present his report.

### **Witnesses Attending**

It is unknown if Councillor Scargill intends to call witnesses.

The Investigating Officer has not requested the attendance of any witnesses.

### **Hearing Procedure:**

The full procedure for the Hearing as agreed by the Chair is attached.

In summary, the Hearing will progress through the following stages and will include the consideration of any comments made by the Authority's appointed Independent Persons, as appropriate: -

- 1.) Introductions and preliminary procedural issues including consideration of any requests for the hearing to be held in full or in part in private.
- 2.) Pre-Hearing Process Summary.
- 3.) Presentation of Investigating Officers Report including witnesses.
- 4.) The Members response including witnesses.
- 5.) Withdrawal of Committee to determine Findings of Fact, whether a breach has occurred and any sanction to be imposed.

In relation to point 1 above, the Hearing will be advised of email correspondence from Councillor Bones sent on behalf of Councillor Scargill received on 24 August 2023. In that correspondence Councillor Bones suggested that the complaint

against Councillor Scargill was out of time because the hearing of the complaint had not been concluded within 3 months of the completed investigation report being provided to him. The report had been sent to him on 22 May 2023. In making this suggestion Councillor Bones referred to a provision in the Authority's Local Arrangements document at page 36. This correspondence was shared with the Chair at the Pre-Hearing Process meeting and will be shared with the Standards Committee/Sub-Committee at the hearing.

In the Pre-Hearing Process meeting the Monitoring Officer referred to the correspondence that had been undertaken between his Office and Councillor Scargill during the period from the completion of the report up to and including the day immediately before the Pre-Hearing Process meeting in relation to receiving from Councillor Scargill his response to the Investigation report and the completion of Forms A to E and to the extensions in time to provide that information which had been afforded to Councillor Scargill.

The Monitoring Officer advised the Chair that the Local Arrangements document provided that the Pre-Hearing process was predicated on engagement by the subject member of the complaint. In particular, on Page 35 it provided that "Upon the receipt of responses, the Monitoring Officer will discuss the responses with the Chair of Standards Committee and will complete the Pre-Hearing process". It was noted that the Arrangements document expected a response from the Subject Member and the completion of Forms A to E within 14 days of the completed Investigation report being provided to them. Of course, Members were also required in accordance with the Paragraph 8 of the General Conduct section of the Code to co-operate not just with any investigation but also enabling a matter to proceed to a hearing.

The Monitoring Officer advised the Chair that the Local Arrangements and the process set out therein and adopted by the Authority aims to be fair to both the Subject Member and the Complainant and must, comply with the rules of natural justice so as to ensure a fair hearing is undertaken. This was why at Councillor Scargill's request the investigation report following its completion had been subsequently reviewed by the Monitoring Officer to address particular concerns that Councillor Scargill had raised in relation to how the complaint against him had been dealt with in contrast to issues he had raised about the Elected Mayor's use of Council resources. The Monitoring Officer was of the view that Councillor Scargill's request for a review had paused time between 26 May and 12 June (at the earliest), the latter date being the date that the Monitoring Officer concluded his review although there was an argument that the pause extended to 24 July



2023 as there had been subsequent correspondence following the outcome of the review being communicated to Councillor Scargill.

In the Pre-Hearing Process meeting the Monitoring Officer also advised the Chair that the Local Arrangements document specifically provided on Page 8 at Paragraph 15 the following:

“The Standards Committee/Sub-Committee, on the advice of the Monitoring Officer, may depart from these arrangements where it is necessary to do so in order to secure the effective and fair consideration of any matter.”

Furthermore, that Paragraph 8 of the Code of Conduct placed an obligation on all Members of the Council to “cooperate with any Code of Conduct investigation and/or determination”.

The Chair noted the situation.

In the light of the circumstances detailed above the Monitoring Officer advised the Chair that he was of the view that it would be improper if the complaint against Councillor Scargill did not proceed to a hearing just because it had not been heard within three months of the completion of the investigation report should it not be heard before 12 September (being 3 months from 12 June 2023). The Chair noted the advice and then determined to proceed to undertake the Pre-Hearing review.

The Chair was advised that when the Standards Committee/Sub-Committee is called to hear this matter as a preliminary matter the Committee/Sub-Committee will be apprised of this issue and asked, if necessary, to formally depart from the arrangements with respect to the timescale to allow the hearing to proceed.

**Date Pre-Hearing Process Summary Completed:**



**Signed** \_\_\_\_\_

**Councillor Frank Lott**

**Chair of the Standards Committee**

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## Stephen Ballantyne

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**From:** Stephen Ballantyne  
**Sent:** 31 August 2023 16:34  
**To:** Olly Scargill (Cllr)  
**Cc:** John Barton; Louise Watson  
**Subject:** RE: Standards Complaints

Dear Cllr Scargill

Further to the email below from Cllr Bones and our conversation on Friday afternoon with respect to the complaints made against you under reference numbers NT14 and 15.2022-23.

It is correct to state that the Independent Investigator's report was completed on 22 May 2023. This is the date that Mr Barton of my office sent a copy of the completed report to you. Since that date, you wrote to me on 26 May stating that you "rather I didn't progress this "as quickly and efficiently as possible"" as you "still have concerns." You also stated that "There is a serious issue that when communicating with the previous Monitoring Officer around Norma's use of Council social media, I was informed there had been no misuse of Council resources. I don't believe the same courtesy has been applied to me. The independent investigator has to seek legal advice to figure out if this was misuse of resources. There is a clear contradiction here and it feels as though I have been given conflicting advice from the previous Monitoring Officer. In light of this discrepancy, I would appreciate if you could review the complaint."

As a result of this request, I undertook the review you requested. Your request for a review of the complaint meant that the complaint process was in effect paused so that I could undertake the review as requested of me by you. Subsequently, I wrote to you on 12 June 2023 following my review and set out the outcome of my review. In my email of 12 June, I stated that the complaints would proceed in accordance with the Local Arrangements document to a full hearing. Notwithstanding my review you responded to me again on 13 June 2023 raising further concerns that: I was not aware of and had not seen any record of you raising the issue in relation to the Elected Mayor's alleged use of Council resources. I replied to you further on this matter on 12 July following discussions with the former Monitoring Officer. You again raised this issue with me on 13 July and I provided a final substantive response on 24 July.

I am of the view that this complaint was paused between 26 May 2023 and at the earliest 12 June 2023 although there is an argument that this pause extended to 24 July.

Mr Barton contacted you by email on 13 July and 21 August. In those emails Mr Barton was, in accordance with the Local Arrangements document, seeking your formal engagement and a response from you to the issues raised in the Independent Investigator's report. On both occasions Mr Barton copied to you the Model Response Forms A to E. You did not reply to Mr Barton's emails nor did you provide the Forms A to E as requested.

On 24 August 2024, ██████████ spoke to me on his own behalf and, so I understand on your behalf. ██████████ suggested to me that the complaints made against him and you were now out of time because the hearing of the complaint had not been concluded within 3 months of the completed investigation report being provided to you. ██████████ followed that up with his email below.

The Local Arrangements document provides that the Pre-Hearing process is predicated on engagement by the subject member of the complaint. In particular, on Page 35 it provides that "Upon the receipt of responses, the Monitoring Officer will discuss the responses with the Chair of Standards Committee and will complete the Pre-Hearing process". It is important to note that the Arrangements document expects a response from the Subject Member and the completion of Forms A to E within 14 days of the completed Investigation report being provided to them. Of course, Members are also required in accordance with the Paragraph 8 of the General Conduct section of the Code to co-operate not just with any investigation but also enabling a matter to proceed to a hearing.

As you must appreciate the Local Arrangements and the process set out therein and adopted by the Authority aims to be fair to both the Subject Member and the Complainant and must comply with the rules of natural justice so as to ensure a fair hearing is undertaken. This is why you were provided with additional time to submit your responses, notwithstanding the pause whilst your concerns were reviewed, to ensure that the process was as fair to you as possible and that your comments on the Investigation report were documented.

Throughout the time since the completion of the Investigation report, I have given regular updates to the Chair of the Standards Committee on the situation in respect of this complaint and other complaints. The Chair has been made aware that the Forms A to E have not been received from you despite more than one request for you to do so.

A Pre-Hearing Process meeting in relation to these complaints has been held with the Chair of the Standards Committee. In the Pre-Hearing Process meeting, I advised the Chair of the current situation and of [REDACTED] email below as it relates to the complaints against you. I also advised the Chair of the provisions I indicated to you when we quickly discussed this issue on Friday afternoon. As I mentioned, the Local Arrangements specifically provide on Page 8 at Paragraph 15 the following:

“The Standards Committee/Sub-Committee, on the advice of the Monitoring Officer, may depart from these arrangements where it is necessary to do so in order to secure the effective and fair consideration of any matter.”

I also advised the Chair of the provisions of Paragraph 8 of the Code of Conduct. This places an obligation on all Members of the Council to “cooperate with any Code of Conduct investigation and/or determination”.

I further advised that Chair that, because of the pause in progression of this complaint whilst I undertook the review you requested, I did not consider that the 3 month timeframe had actually elapsed in relation to these complaints.

The Chair of the Standards Committee noted the situation.

In the light of the circumstances detailed above I advised the Chair that I am of the view that it would be improper if the complaint against you did not proceed to a hearing just because it had not been heard within three months of the completion of the investigation report should a hearing not occur before the 12 September. The Chair noted my advice and then determined to proceed to undertake the Pre-Hearing review.

Please note that when the Standards Committee/Sub-Committee is called to hear this matter as a preliminary matter the Committee/Sub-Committee will be apprised of this issue and asked, if necessary, to formally depart from the arrangements in relation to timescale to allow the hearing to proceed. My advice to that Committee/Sub-Committee will be as set out in this email.

You will therefore be advised of the date of the Hearing in due course. You will be given, in accordance with the Local Arrangements document, at least 14 days’ notice of the hearing date, time and venue as well as a copy of the hearing papers.

Yours sincerely

Stephen Ballantyne

**Stephen Ballantyne**

Head of Law and Monitoring Officer

Legal Services

North Tyneside Council

Quadrant East, The Silverlink North,

Cobalt Business Park,

North Tyneside, NE27 0BY

North Tyneside Council

Telephone: 0191 6435329



**NOTE: This communication may contain confidential legal advice or relate to legal proceedings or is sent in contemplation of legal proceedings. It may be legally privileged and exempt from disclosure under the Freedom of Information and Data Protection provisions.**

**From:** [REDACTED]  
**Sent:** Thursday, August 24, 2023 1:26 PM  
**To:** Stephen Ballantyne <[Stephen.Ballantyne@northtyneside.gov.uk](mailto:Stephen.Ballantyne@northtyneside.gov.uk)>; John Barton <[John.Barton@northtyneside.gov.uk](mailto:John.Barton@northtyneside.gov.uk)>  
**Subject:** Standards Complaints

\*EXTRNL\*  
Hi Both,

I have already explained this to Stephen this morning but I thought useful to put it into writing too.

In the Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members (May 2022) on page 34 it states under point three 'The Monitoring Officer shall send a copy of the Investigating Officer's final report to the Member, the Complainant and the Independent Persons.' Which John helpfully did in his letter dates 23rd May 2023.

On page 36 of the arrangements it clearly states "The Chair of the Standards Committee, in consultation with the legal adviser will then: - confirm a date, time and place for the hearing, which **must** be within three months from the date that the report was completed" - as the report was completed on the 23rd May 2023 and the hearing has not taken place the arrangements have not been followed.

I have taken advice from the LGA who have confirmed to me that the LGA's model arrangements do include a clause for extending the period beyond three months, however North Tyneside's local arrangements do not include this clause and as a result the hearing cannot now take place as it would be specifically against the local arrangements agreed by Full Council.

The same applies to the complaint against Cllr Scargill.

Please let me know if you have any questions.

[REDACTED]

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## **North Tyneside Council**

**Complaints by Cllr Willie Samuel (Ref: NT14.2022-23) & by Ms Alison Austin and Mr Frank Austin (Ref: NT15.2022-23) against Cllr Oliver (“Olly”) Scargill**

**Kenyon Brabrook Limited**

**Report prepared by Melvin Kenyon for the Monitoring Officer,  
North Tyneside Council – 15th May 2023**

## Investigation Report – North Tyneside Council

### Complaints by Cllr Willie Samuel (Ref: NT14.2022-23) & by Ms Alison Austin and Mr Frank Austin (Ref: NT15.2022-23) against Cllr Oliver (“Olly”) Scargill

#### 1. EXECUTIVE SUMMARY

##### 1.1 BACKGROUND

In mid-February 2023, Melvin Kenyon, of Kenyon Brabrook Ltd, began the investigation of two Standards Complaints that had been made about alleged breaches of the North Tyneside Code of Conduct for Elected Members and Co-opted Members. The investigation began subsequent to Letters of Engagement that had been sent to Paul Hoey, of Hoey Ainscough Associates by Jacqueline Laughton, Assistant Chief Executive and then Monitoring Officer of North Tyneside Council.

This report (“the Report”) deals with the investigation (“the Investigation”) of those two Standards Complaints (together “the Complaints”) which were made by (i) Cllr Willie Samuel, a member of North Tyneside Council (Ref:14.2022-23) and (ii) Ms Alison Austin and Mr Frank Austin, members of the public (Ref: NT15.2022-23). The Complaints were made against Cllr Oliver (henceforth Olly) Scargill, himself a member of North Tyneside Council (“NTC” and “the Council”).

##### 1.2 BRIEF SUMMARY OF THE INVESTIGATION

On 1<sup>st</sup> August 2022 Cllr Willie Samuel submitted a Standards Complaint to the Council. On 5<sup>th</sup> August 2022 Ms Alison Austin also submitted a Standards Complaint to the Council on behalf of herself and Mr Frank Austin. The Standards Complaints were about a post that was alleged to have been made by Cllr Olly Scargill on his political Facebook page a few days after a Full Council meeting which had taken place on 21<sup>st</sup> July 2022.

The Complainants (and in particular Ms Austin) attached screenshots of the Facebook post and the comments that followed. Together the Complainants alleged that Cllr Scargill had, in his Facebook post, treated the elected Mayor in a disrespectful way, had brought his own role and that of the Mayor into disrepute and had also brought the Authority into disrepute. In doing so, they alleged, Cllr Scargill had breached the North Tyneside Council Code of Conduct for Elected Members and Co-opted Members.

We discuss the Complaints in greater detail in Section 5 below.

##### 1.3 CONCLUSIONS AND RECOMMENDATIONS

We conclude, based on the balance of probabilities and the evidence available to us, that:

1. **Cllr Olly Scargill knew it to be false to suggest to readers of his Facebook post that the Mayor was attacking him for “standing up for his residents”. As Cllr Scargill knew his comments be false his comments are not protected by Article 10 and a restriction on his freedom of expression is justified. Furthermore, Cllr Redfearn has the right to be protected from hatred and discrimination.**



2. Cllr Scargill breached Paragraph 1.1 of the Code in that he failed to treat Mayor Norma Redfearn with respect.
3. Cllr Scargill breached Paragraph 5.1 of the Code in that he brought his role as a councillor into disrepute.
4. Cllr Scargill breached Paragraph 7.1 and 7.2b of the Code in that he misused Council resources (the Council's YouTube record of the Full Council Meeting on 21<sup>st</sup> July 2022) and failed to ensure that the resources were not used for political purposes.

On the basis of the conclusions above we make the following recommendations:

**That the Monitoring Officer should act in accordance with Paragraph 10 of the "Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members (May 2022)".**

Paragraph 10 of the Arrangements sets out "What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?" and reads as follows:

a. **Local Resolution**

Where the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct, there may still be an opportunity for local resolution, avoiding the necessity of a hearing. An investigation report may cause a member to recognise that his/her conduct was at least capable of giving offence, and /or identify other appropriate remedial action, and the complainant may be satisfied for instance, by recognition of fault or an apology. It would only be appropriate for the Monitoring Officer to agree a local resolution at this stage after consultation with one of the Authority's Independent Persons and the Chair of the Standards Committee. In addition, this would be conditional on the complainant being satisfied with the outcome. A summary report on any local resolution of a complaint would be reported to the Standards Committee for information.

b. **Referral for Hearing**

If local resolution is not possible, the Monitoring Officer will then refer the matter for a hearing before the Committee/Sub-Committee.

## **2 OFFICIAL DETAILS OF SUBJECT MEMBER**

Cllr Scargill told us that he was first elected as a Conservative Member for the Collingwood Ward in the 5<sup>th</sup> May 2022 local elections (at time of writing he is one of three councillors representing the ward).

The Council website states that Cllr Scargill is a member of the Council's Adult Social Care, Health & Wellbeing Sub Committee and the Housing Sub Committee.

At time of writing Cllr Scargill is one of six Conservative councillors in a Council of 60 members (there are 51 Labour members and three Independents). The Labour Mayor, Norma Redfearn, was re-elected for a third term in May 2021.

It was clear to us when we spoke to Cllr Scargill that he was aware of North Tyneside Council's Code of Conduct for Members and Co-opted Members and the overarching ethical framework that governed members' behaviour.

### **3 RELEVANT LEGISLATION AND PROTOCOLS**

#### **3.1 LOCALISM ACT 2011**

Under section 27(1) of the Localism Act 2011 (“the Act”) a “relevant authority” (which includes a local council) is placed under a statutory duty to “promote and maintain high standards of conduct by members and co-opted members of the authority”.

Under section 27(2) of the Act a relevant authority “must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity” (see 3.3 below).

Under section 28(1) of the Act a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with prescribed Principles of Standards in Public Life – the so-called “Nolan principles”.

The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level which endangers public confidence in democracy.

Under section 28(6) of the Act, principal authorities must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By section 27(7), arrangements put in place under subsection (6)(b) must include provision for the appointment by the principal authority of at least one “independent person” whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.

Section 28(11) of the Act provides that if a member or co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.

#### **3.2 NORTH TYNESIDE COUNCIL’S CODE OF CONDUCT**

Under Section 27(2) of the Localism Act, the Council adopted a revised North Tyneside Code of Conduct for Elected Members and Co-opted Members on 19th May 2022 (“the Code”). That took account of the LGA Model Code of Conduct which had been drafted in 2020. The Code replaced the previous North Tyneside Code of Conduct for Elected Members and Co-opted Members which had first been adopted on 4<sup>th</sup> July 2012.

The Code deals with the conduct that is expected of members and co-opted members of the Council when they are acting in that capacity as required by Section 27 of the Localism Act.

The Code is intended to be consistent with the Seven Principles of Public Life – the Nolan principles – and these are included in the preamble to the Code and are attached as Annex 1 to the Code.

The Code applies whenever a person is acting in their capacity as a member or co-opted member of the Council. The preamble to the Code says that that means, “whenever you (a) conduct the business of the Authority (including the business of your office as an elected councillor or co-opted member) or (b) act, claim to act or give the impression you are acting as a representative of the Authority.” Please see Section 3.3 below.

In making his Complaint Cllr Samuel referred specifically to Part 1 - General Conduct, Paragraph 1.1 of the Code – “As a member you must treat other members and members of the public with respect” and to Paragraph 5.1 of the Code - “As a member you must not do anything to bring your role or the Authority into disrepute”. He said that the Code is “specifically applicable to electronic and social media communication, posts, statements and comments”.

In making their Complaint Ms Austin and Mr Austin said that they believed Cllr Scargill had breached the Code. Whilst they did not refer to specific paragraphs of the Code they said that he had failed to treat Mayor Redfearn with respect (Paragraph 1.1), had brought his own role as a councillor into disrepute and had also brought the Council into disrepute (Paragraph 5.1).

When writing her Assessment Decision Letters to Cllr Scargill, Jacqueline Laughton referred to Paragraphs 1.1 and 5.1 of the Code. She also suggested that Paragraph 7.1 of the Code may also be engaged – “You must not misuse the Authority’s resources” and Paragraph 7.2b – “You must, when using the Authority’s resources or authorising their use by others .... ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Authority or of the office to which you have been elected or appointed.”

### **3.3 WHEN DOES THE CODE OF CONDUCT APPLY?**

Under section 27(2) of the Act a relevant authority “must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity”. This section of the Act narrowed the remit of the previous national Code of Conduct with the result that a council can only investigate matters where a member was acting as a councillor or as a representative of the council at the time of the alleged incident.

Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the code; a link to that person’s membership of their authority and specifically their role as a councillor is needed.

Some activities clearly have no link with the council such as a purely domestic matter or something that a member may do while employed in work completely unrelated to the council. Councillors must actually be engaged on council business or commenting on council business or acting as a representative of the authority to be deemed “within capacity”.

#### **4**     **CONTEXT**

Wikipedia tells us that “North Tyneside is a metropolitan borough in the metropolitan county of Tyne and Wear, England. It forms part of the greater Tyneside conurbation. North Tyneside Council is headquartered at Cobalt Park, Wallsend.

“North Tyneside is bordered by Newcastle upon Tyne to the west, the North Sea to the east, the River Tyne to the south and Northumberland to the north. Within its bounds are the towns of Wallsend, North Shields, Killingworth and Whitley Bay, which form a continuously built-up area contiguous with Newcastle.”

North Tyneside Council “is a metropolitan district council, one of five in Tyne and Wear and one of 36 in the metropolitan counties of England, and provides the majority of local government services in North Tyneside.”

## **5 SCOPE OF THE INVESTIGATION**

We used the Complaints and the subsequent Letters of Engagement to define the scope of the Investigation.

### **5.1 COMPLAINT FORM – CLLR WILLIE SAMUEL**

On 1<sup>st</sup> August 2022, Cllr Willie Samuel submitted a Standards Complaint to NTC using the Council's Complaint Form. It read as follows:

**[Begins]**

#### **Introduction**

*This complaint is about the conduct of Cllr Olly Scargill. He has deliberately sought to bring the council into disrepute by posting a video of the Elected Mayor on his political Facebook page and misrepresenting the context of her comments. She was speaking in a debate on standards of conduct by members of the authority but Cllr Scargill has implied that the comments were made in a different debate which proposed referenda on all new cycling infrastructure and indicated opposition to the new roundabout at Rake Lane which Cllr Scargill has been speaking against.*

*He has sought to encourage abusive comments and negative perceptions about the Elected Mayor for political gain which is in breach of the code of conduct for elected members.*

#### **Sequence of events**

*At its meeting on Thursday the council debated a number of motions. Two are relevant to this complaint.*

*Motion 3 was on the issue of honesty, integrity and respect in politics. The Elected Mayor made a contribution to this debate which was recorded and is available online. All members of the authority supported this motion including Cllr Scargill.*

*Motion 5 was proposed by Councillor Scargill on the subject of 'Dutch' style roundabouts, suggesting there should be no further such constructions and suggested referenda be held on any future cycling schemes. This motion was amended and passed in an amended form. The amendment retained the commitment not to construct any further such roundabouts, but removed the need for referenda. Councillor Scargill opposed the amended motion, having voted against the amendment. The elected mayor did not speak in this debate.*

*On Wednesday July 2022 [sic] Cllr Scargill posted on his Facebook Page 'Cllr Olly Scargill -Your Local Campaigner.' His comment was that 'At last week's full council the Mayor attacked me for standing up for my residents. This assertion was backed up by the use of a heavily edited and doctored clip of the Mayor's speech from Motion 3 on integrity in politics. The implication being that the comments had been made in Motion 5. Comments by the Mayor acknowledging the integrity of most Conservative councillors were edited out, and effects were added to include sinister music and a fade from colour to black and white.*

*The edited post was designed to bring the office of elected Mayor and the council into disrepute and to encourage expressions of views which were inaccurate and at times offensive. I have*

*attached screenshots from the post and a download of the posted video. The actual unedited comments are available on the council's You Tube channel."*

Having listed what he alleged were the specific breaches of the Code – Part 1.1 and Part 5.1 (see Section 3.2 above) – Cllr Samuel continued:

**Conclusion**

*"As indicated, I have attached a number of screenshots from Cllr Scargill's Facebook Page and a downloaded copy of the edited video in case these are removed or tampered with. I also attach a link to the video of the council meeting.*

*It seems clear to me that Cllr Scargill has set out to encourage a perception that the Mayor has been offensive in her behaviour and thus bring her and the authority into disrepute."*

**[Ends]**

We were supplied with a copy of the screenshots from the Facebook page and the downloaded copy of the edited video, which remains extant at time of writing.

**5.2 COMPLAINT FORM – MS ALISON AUSTIN and MR FRANK AUSTIN**

On 5<sup>th</sup> August 2022, Ms Alison Austin and Mr Frank Austin submitted a Standards Complaint to North Tyneside Council using the Council's Complaint Form. The Complaint was lengthy owing to the large number of appended screenshots (not included below). It read as follows:

**[Begins]**

*On Thursday 22<sup>nd</sup> July a motion was debated in the Chamber of North Tyneside Council. The motion is copied below.*

**Motion 3 by Councillor Carl Johnson, Andy Newman and Martin Rankin**

*Honesty, integrity, and respect matter in politics. In the previous two election cycles we've seen acts of dishonesty, deception, and often a lack of respect shown to fellow candidates. This Council therefore calls upon the Elected Mayor to write to all political parties who stood candidates in the 2022 local elections in North Tyneside calling on them to pledge to;*

- *To always make it clear on election literature which party it is from*
- *To not abbreviate the name of your political party on an imprint*
- *To not impersonate local media to use as a party-political platform*
- *To always ensure postal vote sign-ups are sent direct to the council*
- *To make clear on any social media account which political party is behind it*
- *To treat other candidates with respect*
- *To not impersonate another political party on literature*
- *To uphold the highest standards of integrity which the public expect from us*

**Our complaint**

*We both stood as independent candidates and were ourselves subjected to fake news and personal attacks online, using material which only the Conservatives would have been aware of. In addition, a paid deliverer or ours was intimidated by two young Conservative councillors (Bones*

*and Scargill) as he delivered our literature. They threatened to sue him for defamation if he didn't go home and stop delivering the literature – fortunately he ignored them.*

*We were therefore very keen to listen to the debate and view the result of the vote on the motion. Frank was there in person whereas I watched the YouTube video a few days later.*

*Several speakers decried the fake news tactics which had been used by certain members of the Conservative party in the May 2022 elections, including using tiny print in imprints, the NTCF abbreviation, leaflets designed to impersonate other parties and council letters, anonymous social media accounts making vicious personal attacks, and fake news “media outlets”.*

*Several Labour councillors made impassioned speeches on the need for this kind of behaviour to stop, and some female councillors raised the issue of such fake news leading to attacks on social media, and the possibility of actual physical attacks such as that which led to the death of Jo Cox MP.*

*We were pleased to hear the Conservative Group Leader, Cllr George Westwater speak in support of the motion, and to see that the motion was agreed unanimously, including by two of the councillors who had used these underhand tactics in the election, Cllrs Scargill and Bones.*

*However less than a week after voting to accept the new principles as set out in Labour's motion, Cllr Scargill posted an edited video clip of the remarks the Mayor had made when she spoke to the motion.*

*The clip was shown out of its' true context, and instead Cllr Scargill described a false context, as follows: [clip then followed]*

*Cllr Scargill also edited the video to include Mayor Redfearn's name and subtitles of her words.*

*The statement that the Mayor was reacting to Cllr Scargill's campaign about the roundabout and A and E department is utterly false – he is well aware that she was speaking to the motion on integrity and honesty whilst campaigning. Cllr Scargill's motion regarding the roundabout at Rake Lane came after her remarks were made.*

*In addition, she was not singling Cllr Scargill out – those who have been on the receiving end of the fake news and anonymous attacks from the Conservative party in North Tyneside know that it is Cllr Liam Bones who is the instigator, and that the Mayor was largely referring to him (he was sitting next to Cllr Scargill).*

*Following the publication of the video a large number of people commented on Cllr Scargill's post, many were personally abusive towards the Mayor and we believe some of them to have been quite threatening.*

*It is also noticeable that, rather than ask commenters to stop the abuse and personal attacks on the Mayor, Cllr Scargill simply copied and pasted the same response to each one, as below: [Post then followed]*

*It is clearly a lie to suggest that the Mayor's speech concerned Cllr Scargill's campaign.*

*Cllr Scargill sat and listened to the pleas from Labour councillors and from his own Group Leader for a return to honesty and integrity in politics, and to leave underhand and deceitful campaigning behind. He voted in favour of the motion. Yet a few days later he edited a video of the Mayor's*



*speech, added titles and subtitles, and posted it on his Facebook page, knowingly ascribing a completely false context to her remarks. Furthermore, he has done absolutely nothing to correct the context, or to reprimand those making disgusting personal attacks on the Mayor as a direct result of his lies. In fact, it is common knowledge that if anyone attempts to comment on his post and give the true context of the Mayor's words, they are blocked and the comments deleted or hidden from the public.*

*The post was removed for a few days (we suspect that the Conservative Party hierarchy may have had a hand in that) however it reappeared on Cllr Scargill's Facebook page on August 4<sup>th</sup> 2022.*

*Cllr Scargill is a newly elected councillor but he was involved in campaigning in Jesmond, Newcastle for many years and held officer posts within the Conservative party. He is an intelligent person, studying to be a doctor, has experience in politics and is currently an officer of the North Tyneside Conservative Federation. We believe that he is perfectly aware of what he is doing and seems to be revelling in his persona as a "rebel".*

*He has deliberately gone against what was agreed at council and what was clearly the wish of his own Group. He has shown total disregard for the issue of the safety of councillors and candidates from online abuse and even physical threats and attacks and has shown total and utter contempt for the council and his fellow elected members as a result. How can the council exercise its' duty of care towards elected members when one of them is using lies and deceit to stir up bad feeling against others?*

The Complainants then listed the areas in which they felt that the Code had been breached (see Section 3.2 above) and appended 23 pages of screenshots said to be from Cllr Scargill's Facebook page (not included here).

### **5.3 LETTERS OF ENGAGEMENT**

Before we began the Investigation we studied the Letters of Engagement from the Monitoring Officer which had been passed to us. Together they summarised the Complaints that we were to investigate and attached a number of documents as appendices (listed in Appendix 1 below).

The Letters of Engagement suggested that, if the Code of Conduct were to be engaged, certain paragraphs of the Code of Conduct may in turn be engaged. The Monitoring Officer wrote:

"Part 1 – General Conduct, Paragraph 1.1 - Respect

You must treat other members and members of the public with respect. If the footage of the Mayor's speech has been edited in such a way that words have been omitted and the impression given that the speech related to Motion 5 about the roundabout at Rake Lane rather than Motion 3 which related to honesty, integrity and respect in politics then it could be argued that posting an edited version of the speech out of context was disrespectful.

Part 1 – General Conduct, Paragraph 5 – Disrepute

5.1 You must not do anything to bring your role or the Authority into disrepute.

If an edited version of the Mayor's speech taken out of context and said to be a speech made in relation to Councillor Scargill's election campaign including his opposition to the Dutch-style roundabout at Rake Lane rather [than] her contribution to the debate on a different motion

concerning honesty, integrity and respect in politics it could be said the Mayor's office and the Authority have been brought into disrepute.

Part 1 – General Conduct, Paragraph 7.1 and 7.2b. – Use of the Authority's Resources and Facilities

You must not misuse the Authority's resources and ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Authority or of the office to which you have been elected or appointed.

An Authority produced record, such as the YouTube record is likely to be a resource which was covered by the bar on use of the Authority's resources for political purposes. The use of part of the YouTube footage on a "political" Facebook page operated by you could be seen to be a breach of this paragraph of the Code of Conduct.

External legal advice was obtained from leading Counsel on what amounts to a "resource" and his view was that the Youtube footage produced by the Authority could be viewed, in his opinion, as a "resource" and therefore there would be a bar to that resource being used for political purposes."

#### **5.4 CLLR OLLY SCARGILL RESPONSE TO THE COMPLAINTS**

For completeness we set out (though we have not tried to copy the formatting precisely below) Cllr Olly Scargill's response to the Complaints (he made a single response to both) which read [sic]:

**[Begins]**

*"I completely refute the issues raised in the standards complaints from Cllr Samuel and the Austins. All of the complainants stood against Conservative candidates in the May 2022 local elections and I see this as a continuation of politically-motivated attack.*

*The complainants have alleged that I have breached these points of the Code of Conduct, all of which I refute.*

##### **1. Respect As a member**

##### **1. 1.1 You must treat other members and members of the public with respect.**

*The clip of the Elected Mayor's speech has no content added or removed. This was made in a public forum and if she did not wish for her words to be repeated she should not have said them. Simply sharing what someone has said in a public forum is not treating someone without respect..*

*The caption for the video, and the justification for each line, is below:*

*At last week's Full Council meeting, the Mayor attacked me for standing up for my residents [our underlining]*

*The Mayor singled me out in her verbal attack as the only new, young, Member of the Council in a discussion about the May 2022 local elections and Camperdown by-election.*

*Throughout my campaign, I had 3 main pledges: to save our green space, to tackle anti-social behaviour and to campaign for 24-hour care at Rake Lane.*

*These were my 3, well-published, pledge points in the local election. This is a statement of fact.*

*Speaking about the last election, the Mayor thought it was appropriate to single me out (as the only new young member) in a clearly ageist outburst.*

*The Mayor singled me out in her verbal attack as the only new, young Member of the Council in a discussion about the May 2022 local elections and Camperdown by-election. The Mayor repeatedly referenced my age in her outburst.*

*No amount of nastiness from this Labour Mayor will stop me standing up for my residents*

*The tone of the Mayor's speech, as well as phrases such as "What future lies ahead of you after you've done all this – I just don't know", was clearly hostile.*

**5. Disrepute As a member:**

**5.1 You must not do anything to bring your role or the Authority into disrepute.**

*Sharing a clip from a meeting in a public forum is not misleading the public. This is common for debates in Parliament. Please see above for defence of the caption on the video.*

*The public can make up their own mind about whether it was right for the Mayor to speak to me in such a tone. The full debate can be found easily on YouTube for anyone who would like to watch the entire video of 3 hours. As a Councillor, I have a duty to increase accountability and keep my residents informed with what happens in the Chamber.*

*I have a political position within the Council and it is right that I engage in robust political discourse. I am disappointed that Labour and these two independent candidates are wilfully wasting Council Officers' time with petty party politics."*

**[Ends]**

[When commenting on the Report whilst it was in draft Cllr Scargill repeated his assertion that - and gave reasons why - the Standards Complaint submitted by Alison and Frank Austin should be considered to be a politically motivated complaint. The assertions he made in support of that assertion are outside the scope of the Investigation.

When commenting on the Draft Report Cllr Scargill referred to the Letters of Engagement. He said:

"Respect – I have not claimed that the Mayor was speaking on a different motion to the one she was speaking to but, as I have outlined above, I believe that the context is misunderstood by the investigator as the Mayor's comments could only have related to either my roundabout or A&E campaigns, as we have had no other engagement with one another. As I have said above, if she was implying that I was involved in underhand campaigning, then that is an entirely false accusation and I did not consider that she could have meant this.

Disrepute – The Mayor's reputation has not been damaged by me because she did, regardless of context, make an explicit attack on two young councillors. Her reputation was damaged only by her own actions."]

## **6 APPROACH**

### **6.1 DOCUMENTS AND OTHER SOURCES**

We have taken reasonable steps to list the source materials we specifically reviewed at Appendix 1 (though we do not guarantee that the list is exhaustive). The source materials listed there and the summaries of our formal interviews together formed the evidence base we considered during the Investigation.

### **6.2 FORMAL INTERVIEW METHODOLOGY**

In investigating the Complaints we gathered evidence at formal interview from the following people (listed in the order in which we interviewed them):

- (i) Ms Alison Austin and Mr Frank Austin - Complainants and members of the public
- (ii) Cllr Willie Samuel – Complainant and North Tyneside Councillor
- (iii) Cllr Olly Scargill – Subject Member and North Tyneside Councillor

We interviewed the Complainants on 13th February 2023 and the Subject Member on 3rd March 2023. We carried out all the interviews using the Zoom video communications platform.

By agreement we recorded (video and audio) the interviews. In each case we produced written summaries of our discussions. Those interviewed were given the opportunity to comment on the written record whilst it was still in draft and any relevant comments made were reflected in the final summaries, which were then “virtually” agreed and signed off by interviewees.

Once the summaries had been agreed by interviewees they became the formal record of each interview and the video/audio recordings and any written notes taken at interview were destroyed by us in accordance with best practice.

The written records therefore now form our only record of the interviews. Section 7 of the Report contains text drawn directly from the interview records.

### **6.3 THE REPORT**

The Complaints were similar in scope and nature. In the interests of economy and efficiency and *with the formal agreement of all the Complainants*, we therefore produced one report covering both Complaints. This reflected the approach taken by the Subject Member who had produced one document in responding to the Complaints.

After we had completed the preliminary draft of the Report it was peer-reviewed – for quality and to ensure consistency of approach with similar cases across the country.

Following that peer review, we shared the Draft Report with Stephen Ballantyne (now Monitoring Officer) and John Barton. The intention was that they could ensure that, on its face, the Report was indicative of a satisfactory investigation and was of the required standard. They had no concerns in that respect. We recommended that they should share the Draft Report with one of the Authority’s Independent Persons and ask for any comment they might wish to make.

We then shared the Draft Report, with draft conclusions and recommendations, in confidence with the Complainants and the Subject Member and received responses from all.

We now submit the Final Report containing our final conclusions and recommendations to Stephen Ballantyne and John Barton for their consideration in line with the applicable arrangements. In doing that we pass copyright in the Report to North Tyneside Council.

## **7 FINDINGS**

### **7.1 FULL COUNCIL 21<sup>st</sup> JULY 2022**

#### **7.1.1 MOTION 3 FULL COUNCIL MEETING**

Motion 3 of the Full Council Meeting on Thursday 21<sup>st</sup> July 2022 read as follows:

“Honesty, integrity, and respect matter in politics.

In the previous two election cycles we’ve seen acts of dishonesty, deception, and often a lack of respect shown to fellow candidates.

This Council therefore calls upon the Elected Mayor to write to all political parties who stood candidates in the 2022 local elections in North Tyneside calling on them to pledge:

- To always make it clear on election literature which party it is from
- To not abbreviate the name of your political party on an imprint
- To not impersonate local media to use as a party-political platform
- To always ensure postal vote sign-ups are sent direct to the council
- To make clear on any social media account which political party is behind it
- To treat other candidates with respect
- To not impersonate another political party on literature
- To uphold the highest standards of integrity which the public expect from us”

Motion 3, which was proposed by Cllrs Carl Johnson, Andy Newman and Martin Rankin (all Labour councillors) was passed unanimously (and thus had the support of Cllr Olly Scargill and all other then members of the Conservative Group).

The entire debate on Motion 3 can be found at <https://www.youtube.com/watch?v=dxAINuGP2JI> starting at 0:55:23 and ending with the unanimous vote in favour at 1:27:20.

During the debate Cllrs Carl Johnson, Andy Newman, Peter Earley, Judith Wallace, Josephine Mudzingwa, George Westwater, Matthew Thirlaway, John Harrison, Cath Davis, Willie Samuel, Erin Parker-Leonard, and Tommy Mulvenna spoke in support of the motion along with Mayor Norma Redfearn.

The main themes members covered during the debate were:

- The need for honesty, integrity and respect
- The decline in standards of behaviour over recent years
- Failure to uphold those values nationally and locally – it’s not “just politics” to fail to uphold those values
- The attacks on former Cllr Jim Allan before and during the Camperdown by-election and the poor behaviour during the Camperdown campaign and in the earlier May 2022 election
- Fake news websites, photoshopped images, and fake election leaflets and surveys
- Lying to the public in election and other literature
- Impersonation of other political parties
- Loss of faith by residents in the democratic process and residents’ resultant disengagement from politics

- The need to raise public perception of politicians, to listen to residents and to act as role models
- The rise in inappropriate and angry behaviour and even violence towards politicians
- The view that poor behaviour of members was caused by a small minority of members – “We aren’t all the same” yet “we are all tarred with the same brush”
- The need for positive campaigning rather than negative campaigning and personal attacks
- Divisions within the Conservative Group
- The need for an Opposition to hold the Administration to account
- The need for cross-party support and for all members to adopt and maintain high standards of behaviour

### **7.1.2 MAYOR REDFEARN’S CONTRIBUTION TO THE DEBATE**

During the debate (Labour) Mayor Norma Redfearn spoke briefly in support of Motion 3. Her unedited contribution can be found at <https://www.youtube.com/watch?v=dxAlNuGP2JI> (1:04:25 – 1:05:56). She said the following:

*“Thank you Chairman. I certainly support this motion. But, if you believe in honesty, if you believe in integrity and respect for each other, I have to say I’ve been on this Council a number of years, I’ve never ever known the other leaders of the Tory party whether it be Cllr, well Cllr Arkley which was the mayor, whether it was George, whether it was Judith, we’ve had differences of opinion, right, we haven’t agreed, we’ve had some nasty words, battles said but I’ve never known those people sink so low, so low that what the people, new members in this Council have sunk to it’s just absolutely appalling. I can’t believe young people, brilliant, clever young people who have a future ahead of them sink to that level that you show people what you’re really made of. How dreadful, how dreadful. What you’ve done to yourselves has actually showed everyone just what you’re made of and what future lies ahead of you after you’ve done all this, I just don’t know. But I have to say honesty and integrity and respect, yes I’ve disagreed with many of you, you know that, but never, never ever have I experienced what’s gone on, I believe. Thank you so much.”*

### **7.2 POST ON OLLY SCARGILL FACEBOOK PAGE**

On 26<sup>th</sup> July 2022 a post was made on Cllr Olly Scargill’s Facebook page which can be found at <https://www.facebook.com/CllrOllyScargill/>. The post itself can be accessed quickly using the search term “Redfearn” in the Facebook search facility.

#### **7.2.1 VIDEO EXCERPT FROM THE FULL COUNCIL MEETING**

The post presents a 41 second clip of the original 91 second piece described at Section 7.1.2 above. The clip shows Mayor Redfearn speaking the following words:

*“I’ve never known those people sink so low, so low that what the people, new members in this Council have sunk to it’s just absolutely appalling. I can’t believe young people, brilliant, clever young people who have a future ahead of them sink to that level that you show people what you’re really made of. How dreadful, how dreadful. What you’ve done to yourselves has actually showed everyone just what you’re made of and what future lies ahead of you after you’ve done all this, I just don’t know.”*

We make the following observations:

- The clip initially presents Mayor Redfearn in colour and is captioned “Mayor Norma Redfearn” in black type at the top left.
- As she speaks the post presents the words above subtitled in white type at the bottom of the video footage.
- At around nine seconds music can begin to be heard. The music continues to play and grows in volume until the end of the clip. It is not unreasonable to describe the music as “sinister” and “threatening” (though we have been unable to give a title to the music using the “Shazam” App).
- At 37 seconds the picture abruptly changes to black and white and freezes as music continues to the end of the clip. Mayor Redfearn’s name and the subtitles disappear from the clip. The still photo zooms in on Mayor Redfearn and captures her in what might be described, at best, as an “unflattering” facial expression.

### **7.2.2 WORDS ACCOMPANYING THE VIDEO EXCERPT**

To the right of the clip under Cllr Scargill’s name the following text is posted:

*“At last week’s Full Council meeting, the Mayor attacked me for standing up for my residents.*

*Throughout my campaign, I had 3 main pledges: to save our green space, to tackle anti-social behaviour and to campaign for 24-hour care at Rake Lane.*

*Speaking about the last election, the Mayor thought it was appropriate to single me out (as the only new young member) in a clearly ageist outburst.*

*No amount of nastiness from this Labour Mayor will stop me standing up for my residents”*

The text is “bookended” by two emojis - what appears to be a ballot box at the start and a muscled arm at the end.

### **7.2.3 COMMENTS THAT REFER TO THE POST**

At time of writing the post has attracted 236 comments (apparently from a large number of different individuals) and 56 shares. Most appear to be contemporary with the original post though the post continues to attract a low level of comment and shares. It is impractical to present all the comments in the Report. We recommend that readers look at the posts themselves using the link above. We have tried to provide a balanced summary below.

It appears to us that many of the posts fall into two main groups. Those two groups have the following “flavours”:

- One group praises Cllr Scargill – “Your doing a great job”; “You’re wonderful Olly and she knows it”; “You’re like a breath of fresh air Olly”; “Think your doing fantastic olly”; “Olly keep up the good work”; “We should have more Councillors of your calibre”; “Well said Olly”; “A bright future lies ahead of you Olly keep up the good work”; “Olly we need someone who cares”; “Olly for mayor”;
- Another group is less than complimentary about Mayor Redfearn – “I am actually stunned at how vicious she is;” “She is appalling”; “She knows nothing about anything”; “To single anyone out for being young is absolutely appalling”; “She really needs to go”; “What a bitter and twisted woman”; “Unacceptable bullying behaviour”; “Move onto the retirement home”; “She shown herself up”; “cantankerous old woman”; “She should be utterly



ashamed of herself”; “How vile”; “This is our Mule Normal Redfanny”; “True colours”; “Is that Biffa’s mam?”; “She’s a waste of time, money and expenses”; “Shouldn’t be in the job if she can’t take criticism”; “She’s so arrogant”; “Disgusting”.

On a few occasions there are comments that probe a little more deeply - “What is she referring to? Curious as to what has caused such venom” and “What particular act is she referring to?” Both comments elicit the same reply from Cllr Scargill, “[T]his was her response to my election campaign earlier this year, which was against the Dutch-style roundabout and the 3,000 houses on green space, and for 24-hour care at Rake Lane. I guess this is how we can expect to be treated by the Mayor if we disagree with her point of view.”

### **7.3 CLLR WILLIE SAMUEL**

When we spoke to Cllr Willie Samuel he told us the following:

“The Full Council Meeting of Thursday 21<sup>st</sup> July was misrepresented in Cllr Scargill’s Facebook post .... There were two motions at that meeting that were relevant to the Complaint.

“Council Motion 3 was passed unanimously and, indeed, Cllr Scargill voted for it. It was specifically about the need for integrity in the conduct of political campaigns and in the conduct of Council members more broadly.

“The background to this was that there had been a number of concerns about Conservative Party leaflets in the run-up to the May 2022 elections. One in particular was about a retiring councillor from Camperdown Ward who had been unable to attend meetings for a considerable time due to ill health and had chosen to stand down. The Conservatives portrayed him as “the laziest councillor” on the Council despite the fact that he had been seriously unwell. In fact a motion was passed unanimously at that same 21<sup>st</sup> July meeting thanking that long-serving councillor for his services to the Council. There appears to be no doubt now that that incident was “beyond the pale”.

“So, the background to Motion 3 was all about the Conservatives putting out leaflets that, for example, appeared to be Green Party leaflets but which, on closer examination, weren’t actually Green Party leaflets at all. Motion 3, then, was about the proper conduct of councillors during campaigns and the like and was passed unanimously.

“During the debate on Motion 3, the elected mayor, Norma Redfearn, made a speech .... The gist of it was, “Why are you young people who are coming into politics today doing things like this when there are better ways to operate?”

“There was another motion, Motion 5, at that Council meeting which was moved by Cllr Scargill. It was about a so-called “Dutch-style roundabout”, which had been installed in his ward, and how inappropriate it was (in his opinion).

“A few days after the meeting a short video was released on Cllr Scargill’s Facebook page. It presented only part of Mayor Redfearn’s speech as captured on YouTube and had subtitles. Cllr Scargill was suggesting that that part of the speech that was posted was referring to the Dutch-style roundabout (Motion 5) when, in fact, it was about councillor’s behaviour and integrity in public life as discussed in Motion 3. That was misleading. Cllr Scargill was not being criticised by Mayor Redfearn for his motion on the Dutch-style roundabout yet the way he presented the video

on his Facebook page implied that she was speaking against his motion on the Dutch-style roundabout.

“Cllr Scargill compounded the situation by doctoring the video and adding sinister-sounding music which got louder and louder before it reached the point where it was frozen at the end of the chosen clip with Norma captured in a particular facial expression rather than continuing to the end of her speech.

“The video was using editorial tricks to misrepresent the context of what Mayor Redfearn actually said and which debate it referred to. It made her look as if she was saying something that she wasn’t actually saying. In my opinion, it brought the Mayor and the Council into disrepute. It did not treat the Mayor and other councillors with respect. It breached the Code of Conduct.”

When we asked what Cllr Samuel thought about Cllr Scargill’s response to the Complaint, he replied, “As I recall he denied that the video was doctored. It quite clearly was. Sinister music was not being played at the Council Meeting as Cllr Redfearn was speaking. He appears to overlook the fact that what was said was said in a different context and was about a different motion. He fails to address the salient points in his response and is in denial about the fact that his post is misleading and distorts what was said.”

Referring to Cllr Scargill’s response we said that he had said that the Complaint was part of a “politically motivated” attack on him. Cllr Samuel replied, “The Complaint isn’t politically motivated. It is about misrepresentation of what the elected Mayor actually said. I would contend that the misrepresentation actually comes from presenting the video in a misleading way. I have no issues with Cllr Scargill expressing his views. In the normal course of events there will be banter and I will quite happily attack Cllr Scargill for his views. That is certainly “politically motivated”. This is not. In the public domain Cllr Scargill was trying to make out that Mayor Redfearn had made these comments in a debate about the roundabout, which she had not.

“Notwithstanding what Cllr Scargill said in his rebuttal of the Complaint, it is obvious that content has been added. There wasn’t an orchestra at the Council meeting playing sinister music that grew louder and louder as Norma spoke. Nor did Norma fade to black at the meeting!

“As far as “ageism” and “singling him out as the only newly elected young member of the Authority” is concerned, she wasn’t “singling him out”. Cllr Scargill is one of two newly elected, young councillors – the other is Cllr Liam Bones. It is also indisputable that they are “young”. But what she said was focused on the misleading tactics they were using – like leaflets that were designed to look like they had come from another political party – and not on the fact that they are young. In fact part of her attack was probably against Cllr Liam Bones. He had been disciplined by his own party after suggesting that the retiring Camperdown councillor was the laziest councillor in the Authority. There is no case to say that her comments were “ageist”.

“Cllr Scargill was right to say that the public can view the entire footage of the Full Council meeting. That may be so but this is about his misrepresenting part of that footage. Why did he not reproduce the whole of Mayor Redfearn’s speech and say which motion was being debated? Why did he add sound effects? Why did he fade it to black and white?

“Norma was speaking about a change of strategy by the Conservative Party in terms of their approach to leaflets, videos etc. They set up “fake news sites” which purport to be normal media

websites. They produce fake publications which purport to be independent journalism. They set up fake profiles on Facebook and Twitter expressing “alternative views”. They cut and paste and don’t quite tell the truth. All this is a new development in the last two years or so and is led by Cllr Bones and more lately by Cllr Scargill.

“Some of their fellow Conservative councillors have told me that they don’t like these techniques themselves. This kind of thing is different from “political banter” where name calling and forensic dismantling of speeches happen regularly and there is a need for a thick skin. This new approach is unpleasant, unhelpful and misleading to the public. I don’t like it and members on all sides of the Council share the same opinion.

“The issue is fairly straightforward. As far as I and the Labour Group are concerned the clip on Cllr Scargill’s Facebook page was deliberately misleading. It seeks to bring the elected Mayor into disrepute and to produce negative perceptions of her. You will see from the comments that were made about Cllr Scargill’s post that it has been successful in doing that.”

#### **7.4 MS ALISON AUSTIN AND MR FRANK AUSTIN**

When we spoke to Ms Alison Austin and Mr Frank Austin (and having told us about their former Conservative political affiliations and their unsuccessful candidatures as Independents in the May 2022 elections) they told us the following:

“The reason for this Complaint is not because we have an issue with Olly as a person – we have never even met him except maybe as a disembodied voice on Zoom at the start of COVID. We have never spoken to him.

“Things had got so bad with the skulduggery that was going on - fake news that was being published and leaflets that were purporting to have been issued by another political party - that during the debate on 21<sup>st</sup> July, both Labour and Conservative members said that it had to stop. How could the public trust members if they could not be transparent, open and honest? Motion 3 was proposed by Labour but was passed unanimously in a named vote. Then, literally four days later this heavily tweaked video was published on Olly’s Facebook page.

“The Mayor’s speech had been twisted out of all reality. In the clip Olly published the Mayor speaks for around 41 seconds but in the Council debate she spoke for just over two minutes. The middle of her speech had been chopped out and the context at the beginning and the end had been removed. As a result Olly had deceived people into believing that she was talking about something she wasn’t talking about.

“Throughout the debate on Motion 3 members on both sides had talked mainly about the Camperdown by-election. They had not spoken about the issues that Olly had campaigned on. Those issues were not mentioned or alluded to even vaguely. Olly was not mentioned. It was not accurate to suggest that Norma Redfearn was talking about him fighting for the A&E department or standing up for his residents.

“Presenting what she said in the way he did can lead to physical attacks on people. Norma Redfearn and I have had many disagreements over the years but it is unbelievable that Olly could think that the personal abuse that she got as a result of that post was acceptable, especially after a motion had been passed about the need for honesty and integrity! They get up to all sorts of stuff but this is the first time we have felt the need to do something about it.

“We were both candidates in the 2022 election so we felt that we had a responsibility to complain because we took part in the election where “fake news” had surfaced. Every candidate was expected to behave in a certain way at the election and conform to a standard of behaviour. We have always tried to do that. Since I was first involved in 1990 I cannot remember any literature going out from the Conservative Federation that has been so nasty, underhand and sometimes fake. People tend to take notice of politicians at national level and tend to punish us for what is happening nationally and to send us a message at local level. The only way that you can respond to that at the local level is to retain some kind of integrity and focus on the local issues.”

Ms Austin said, “In my opinion Olly is simply a follower, albeit a willing follower of campaign tactics which are inspired by [another councillor]. He is aware of the fake news etc, aware of the Code of Conduct, and he is enthusiastic about the type of dubious campaigning they are doing, despite both he and [the other councillor] having had concerns expressed to them by officers and members. His pleasure at any “gotcha” moments during Council meetings is clear from his body language .... I believe that Olly writes and posts the posts for the Collingwood Facebook page because [the other councillor] trusts him to do it.

“I have no doubt that when Norma was referring to “young people” when she spoke she was not referring to Olly but principally to [the other councillor]. She was using the plural and not the singular and was very much talking to [the other councillor] because he runs and controls everything. It is not fair to say that she singled Olly out.

“At the end of the clip, when she refers to young people, it seems to me that she is speaking more out of disappointment and sorrow than anger. She sees them as clever young people who are full of enthusiasm and could be successful in whatever they chose to do. She is appealing to them to change their direction of travel before they spoil things for themselves .... She wanted them to campaign properly. By all means disagree, but campaign properly and not in an underhand, devious way that relies on false websites to slag off the Labour candidate in each election ....

“It’s becoming a massive problem and has certainly turned us off having anything to do with the Conservative Group because, even back in 2021, we could see the direction in which this was all going. It has just got worse and worse and worse . The three who have just resigned have had to put up with an awful lot of bullying for quite some time, as we also did. They seem unable to operate in any other way. Even when they get into trouble they simply keep digging. It needs stopping. They voted in favour of Motion 3 and then went home and carried on as if nothing had happened. Sadly, many of their followers believe this stuff as you can see from the horrible things that were said by them about Norma.”

We said that, in responding to the Austins’ complaint Olly had drawn no distinction between their complaint and the other [Cllr Samuel’s] complaint that had been made about the same Facebook post. His first point was that he “completely refutes the issues raised in the complaint and considers the complaint to be a continuation of a politically motivated attack.” What was he referring to there?

Ms Austin replied, “ .... is that going to be his or [the other councillor’s] defence every time there is a complaint against them? It’s not political. There is clear evidence in our complaint that what has been done is deceitful and deliberate.”

We then said that Cllr Scargill had said that the “clip of the Mayor’s speech has no content added or removed”. How would they respond to that? Ms Austin replied, “It’s certainly true that Norma spoke the words that Olly shows her saying in his video clip because I double-checked. That isn’t the problem. What *is* the problem is missing out the first part of her speech where she refers to Conservative councillors who wouldn’t dream of operating like that and missing out a piece at the end along similar lines.

“Doing that allows him to create a completely different context and meaning for what was said by the Mayor. The discussion wasn’t about Olly’s Collingwood ward election campaign and the issues on which he stood. It was about a debate about dodgy tactics in election campaigns and the need for honesty and integrity. But he leads those who respond to his post into believing that it was about Collingwood and his election issues.

“The two leaflets that were held up during the Council meeting as examples of “fake campaigning” were *not* from Olly’s campaign. One was a fake Council Tax survey from the Camperdown by-election and the other a fake “Green” leaflet from Cullercoats ward – so again, nothing to do with Olly.

“It had *nothing* to do with his campaign. He simply fuels that fire (with his cut and paste replies) and doesn’t admonish those people for saying some of the things they did on his Facebook page. He had lots of chances to put the record straight but failed to do so. His post had the desired effect of getting people het up about Norma’s treatment of their lovely shiny new councillor. It was deliberate. He was misleading the public. It’s dragging the Conservative Party down. They have six members left and two of those are utterly fed up with what’s going on. Time is being wasted on this sort of stuff rather than having an Opposition that holds the Administration to account properly.

“On top of that he added spooky music, zoomed in on Norma’s face at the end and lingered there and faded it into black and white. That is typical of the sort of stuff that [the other councillor] has done before .... We watched the video of Motion 3 (and Frank actually went to the meeting) with particular interest because, having stood as Independent candidates, we wondered whether we might get a letter after this motion was passed asking us to sign up to this way of operating at election time. In fact we put out good election literature and would have no problem signing up to that way of working.

“It was blatant and arrogant twisting of what that debate was actually about for his own ends and showed complete disrespect for the Council. He voted for a motion in a named vote and then went and did the complete opposite and launched a personal attack on Norma Redfearn.

“Olly has breached the Code of Conduct. He has clearly not shown respect for Norma Redfearn, fellow councillors and the Council as a whole. He has lied about what she was saying and why she was saying it. I think it brings his role as a councillor into disrepute – people have seen that post and believed him because he is a councillor when what he has posted is not true.

“He hasn’t even attempted to tone down the responses to his post or reminded them of Jo Cox and David Amess or appealed for civility. He is simply interested in self-promotion and saying “look at me and how hard I have been fighting for you, she won’t stop me from saying what I have to say” so that he can get more votes. He is actually revelling in the falsehood of it all. Nor is it respectful to the members there, including members on the Conservative own side ....

“He also brings the Council into disrepute. If that can happen within five days of that vote in Full Council how is a member of the public going to think anything other than the Council does not abide by their own decisions? Within seconds they are back slagging each other off again. I know there is a difference between the two but I would argue that Olly has done both.”

## **7.5 CLLR OLLY SCARGILL**

When we spoke to Cllr Scargill the discussion was as follows.

We began by asking why Cllr Scargill had changed the name of his Facebook page to refer to John Johnsson. He replied, “John Johnsson is a Conservative candidate for 2023 in Collingwood. The page is a page for the Collingwood ward Conservatives. Last year that was just me, this year it’s John and next year it will be the two of us plus another Conservative candidate. So, the page isn’t just for me, it’s a page for the Conservative party in the Collingwood ward.

We then read out some of the words from the Complaint and asked Cllr Scargill to comment on them. He replied, “The Monitoring Officer’s letter to me (dated 18th November) says that I “give the impression that the speech related to Motion 5 about the roundabout at Rake Lane” rather than Motion 3, which is about honesty, integrity and respect in politics. Now, looking at my post I don’t even mention the roundabout. Rake Lane is just a road with the roundabout at one end. I probably wouldn’t be sitting here as a councillor if it weren’t for that roundabout. It was incredibly contentious and residents are constantly in touch with me about it. There is also a hospital on Rake Lane and it is that that I refer to in my post when I talk about 24 hour care.

“Every point contained in the wording of Motion 3 was very clearly about my May 2022 campaign and some of the perfectly legal tactics I used to get elected. Politics is a dirty game and if you want to win you have to do things that some people would find distasteful. It’s the kind of thing that all the parties do. It is disingenuous for Cllr Samuel to say that that motion wasn’t about me when it very clearly was. All the points in the motion appear very reasonable to a member of the public and we happily voted for it.”

We said that, as far as we could see, the first post made by Cllr Scargill was about his campaign. Mayor Redfearn wasn’t talking about his campaign but about integrity in politics. He replied, “When Mayor Redfearn was talking about “new, young members” she was either referring to me, as the youngest member of the Council, or about me and [another councillor].”

We said that, as far as we could see, the Mayor was not trying to stop him standing up for the three things he referred to in his post when she spoke in support of Motion 3. She was talking about behaviours. Cllr Scargill replied, “She was speaking about the local election campaign last year. This motion was all about what happened in that election campaign two months prior to the Council meeting. I haven’t misled anybody. I wasn’t saying she was speaking about a roundabout, as the Monitoring Officer suggests.

“If people were to watch the video of the entire meeting (which they don’t) then they would agree with me that when she spoke she was speaking about me. The Mayor was speaking about my election campaign and asking what kind of future I had if I carried on doing the sort of things I did in my election campaign. She was talking about new, young members. She was staring directly at me when she spoke. I was sitting at the end of a table of nine members and she was looking either at me or at me and [another councillor]. This was an attack on my election campaign and

that was about my three pledges. It was about me. This was my first Council meeting, I think, so my campaign was the only experience she had had of me. She was angry that I had run my campaign which focused on three priorities that really resonated with residents and had taken out one of her Cabinet members. Both complaints are political and are looking to ruin my reputation.”

We then asked about the allegedly “heavily edited and doctored clip”. Cllr Scargill replied, “These are the sort of tactics that are used in politics nationally. They put a lot of people off from going into politics. This sort of thing happened to me during my election campaign. I don’t think adding music is “heavily editing” nor did I insert or remove any words from the clip itself. I thought the music matched the tone of what the mayor was saying. The bit at the end was supposed to be a bit comedic. I can’t deny that I added music and subtitles!

“The fading to black and white and the unflattering photo of the Mayor was just politics. Politicians don’t choose flattering photos of their opponents. Had she said what she said in a nice way instead of in an angry and disparaging tone, then the music and the fade to black and white wouldn’t have worked. I don’t see them as heavy effects nor do I see this clip as personal abuse.

“Adding subtitles was done because I wanted to make it more accessible. When I said that no content was added or removed I was referring to her words, which were not edited at all. By taking out her complimentary references to Conservative councillors I was taking out footage that didn’t add anything to what I was trying to say though I am sure it would have made her look a bit better if I had left it in there.

“I see this as being within the bounds of free speech and fair political comment. There is an expectation that politicians should have a thicker skin than ordinary members of the public. Criticism can become a bit heated. Article 10 of the Human Rights Act is relevant here.

“Before I published this I checked the words of my post with several people in the Conservative Party. The words I went with in the end were the third or fourth revision because I was keen to avoid something like this. I don’t want a headline that reads something like “Councillor found guilty of misusing Council resources” .... We tried to make the caption as safe as possible and I stand by it completely. When I posted this we had several examples of Labour using Council footage on their social media, screenshots of us taken from the Council videos.

“If those councillors can argue that that was conducive to their role as councillor, then so was this. My opinion is that if something happens in the Council Chamber that is of interest to the public then I have a duty to share it with the public. So, I think this was conducive to my role as a councillor and that it was of public interest to my 8000 residents. If it wasn’t of public interest then it wouldn’t have got such a reaction – thousands of views of what was actually happening in the Chamber. The Mayor had spoken in a way that was inappropriate towards me and she should not be allowed to get away with it.

“I did, by the way, put in a Standards Complaint against the Mayor about the way that she spoke to me at that meeting. The phrases that she used and the way she said them - “What future do you have ahead of you?” and “brilliant, clever young people” – were unacceptable. I might be a young member but I am an elected representative just like her and I expect to be spoken to as an equal even though I am a young person. It was clearly an ageist outburst and that was one of the reasons why it was of public interest. She was a headteacher and I don’t expect to be spoken to

like one of her pupils. Unfortunately that complaint was dismissed because they couldn't be sure she was talking about me. I can't prove it was about me unless she admits it. But it is beyond reasonable doubt that what she was saying was aimed at me or at me and [another councillor]. Either way it was about me."

We then asked why Cllr Scargill had not intervened to temper some of the undoubtedly unpleasant things that were said against the Mayor following publication of the clip on Facebook. He replied, "I don't condone any things that were said that might have been "over the line." Usually, if things are really nasty then I or one of the other six Admins do hide them and it may be that that happened here. I don't want my page to be a cesspit. Calling someone "vile" or a "waste of space" for example is not nice but it's just what happens and I am not convinced that those comments were "over the line". If you looked on similar Labour pages and read some of the comments there then I don't think you would find that it is very different.

"But, at the same time, there were many comments and most of them were genuine and justifiable criticisms, like the reference to a chauffeur-driven car (a Jaguar – we have the log-book!) at a time of pressure on the cost of living. I answered questions that were posed and the link to the Council video was in the comments as well so people could watch the meeting in its entirety if they wanted to."

We then asked whether Cllr Scargill had "shown total disregard for councillors' safety". He replied, "I disagree with that entire paragraph from the Austins' complaint. I myself have had a comment made about me which said, "They'll be getting a knock at their door soon" and I had to get the police round. So I understand what is being said here. However, I don't think that my putting this video up which records what the Mayor said, would put the Mayor's safety at risk and I am certainly not condoning any threats towards her. People were angry about it. She shouldn't have spoken in this way and I am entitled to share that with my residents. These are ordinary people, many of them would never have heard the Mayor speak before and they should be allowed to see her speaking in a horrible way towards someone that they have put their trust in."

In summary, Cllr Scargill said, "I don't think that my sharing clipped footage of the Mayor speaking to me or to me and another Conservative councillor constitutes disrespect towards her. If anything it was highlighting the disrespect that the Mayor was showing *towards me*. As far as disrepute is concerned I stand by the view that the Mayor's speech was about an election campaign that the Mayor didn't like and which returned a Conservative councillor. I don't see how that can constitute disrepute.

"Finally, regarding use of the Authority's resources, it is in the public interest to have publicised what the Mayor said. As an Opposition councillor of course I am going to hold the Labour Administration accountable for what the Administration say in the Chamber. That is my role and it is what I am expected to do. The video record had already been produced and there was a clear public interest to be had from sharing it."

## **7.6 ALLEGED MISUSE OF THE AUTHORITY'S RESOURCES**

We asked for and were provided with a copy of an Advice Note that had been prepared by Peter Oldham KC of 11KBW at the request of the Authority. That advice is subject to legal privilege and is referenced here only insofar as is necessary for production of the Report.



Mr Oldham had been asked two questions:

1. Can the YouTube footage produced by the Council on its own time and at its own expense be classed as a “resource” for the purposes of paragraph 7 of the Code of Conduct?
2. If the answer to the above question is “yes”, can the use of selective parts of the full Council YouTube footage amount to a use of a Council resource for political purposes and possibly therefore a breach of the Code of Conduct?

Mr Oldham was also asked to express a view as to whether the use of the footage by Cllr Scargill on his Facebook page was for political purposes.

In answering these questions Mr Oldham referred in particular to paragraph 7 of the Code (see Section 3.2 above) and to the Council’s “Protocol on use of the Authority’s Resources and Support for Members” (“the Protocol”). He answered as follows:

**“Can the YouTube footage produced by the Council on its own time and at its own expense be classed as a “resource” for the purposes of paragraph 7 of the Code of Conduct**

*In my view it can, for the following reasons.*

*The non-exhaustive examples of resources given in paragraph 7 (office support, stationery, equipment such as telephones and computers, transport, access and use of the Council’s buildings and rooms) do not expressly include the footage. In a sense they are different from the footage since they are obviously facilities used to allow members and officers to discharge Council functions. The same is true of the examples of “resources” given in the Protocol (any equipment, office/premises or stationery, and the Council’s officers).*

*However I do not think that a sharp distinction exists between these examples of resources and footage. The footage, like the examples given, is paid for and procured by the Council. Further it is a means by which the Council discharges its functions, albeit in a less concrete fashion than pens and paper use. “Functions” are in my view to be understood as being all the powers and duties of the Council, in accordance with interpretation given to that word, for the purposes of s 111 of the Local Government Act 1972, by the House of Lords in Hazell v London Borough of Hammersmith and Fulham [1992] 2 AC 1. There can be no question that the Council is empowered to publish the Youtube record (whether under s 111 or under s 1 of the Localism Act 2011). The purpose of doing so is doubtless to allow greater public access to the Council’s affairs.*

*Further, in my view it is significant that the Protocol states “Special rules apply to the use of the Authority’s resources in relation to publicity” and then refers in footnote 11 to s 2 of the Local Government Act 1986 (“the 1986 Act”). As the Protocol explains, referring to the definition of publicity in s 6 of the 1986 Act:-*

*“Publicity is defined as ‘any communication in whatever form addressed to the public at large or to a section of the public’. This definition therefore includes press releases, ward bulletins and letters to the media etc but does not include letters to individuals, unless this was on a scale which could constitute ‘a section of the public’.”*

*A Council-produced record, such as the Youtube record, which was itself a form of “publicity” would therefore be likely, in my view, to be a resource which was covered by the bar on use of the Council’s resources for political purposes. It seems to me the Youtube record is a form of publicity*

*as defined (though its publication by the Council is clearly not “designed to affect public support for a political party”).*

*Accordingly in my view the Youtube record may properly be regarded as a Council resource for the purposes of paragraph 7 of the Code.*

***If the answer to the above question is “yes”, can the use of selective parts of the full Council Youtube footage amount to a use of a Council resource for political purposes and possibly therefore a breach of the Code of Conduct?***

*In my view again the answer is yes. It will be a question of fact whether any such use is for political purposes.*

*I have been asked to express a view as to whether the use made of Youtube footage by Cllr Scargill was for political purposes.*

*In considering his purposes, I think it is appropriate to consider the issue objectively rather than by considering the member’s subjective purposes. This is because the Code of Conduct is meant to regulate the behaviour of members as it appears to others, and because an investigation into a member’s subjective purposes will often be hard, and that is unlikely to have been envisaged in the Code of Conduct which is meant to be a practical document.*

*Applying this objective approach my view is that Cllr Scargill’s use of the material was also for political purposes, assuming that he was responsible for posting the footage and the accompanying text – which appears likely since it was posted on a Facebook page in his own name.*

*Material was edited out of the full Council debate to make a point about his particular stance. The Facebook page said that he was a Conservative member. Further, the accompanying text made a political point by referring to his being alleged under attack from “this Labour Mayor”.*

[When commenting on the Report whilst it was in draft Cllr Scargill said, “I do not agree that the term ‘Council resource’ extends to videos which are placed on YouTube because a) these can be accessed by any member of the public (and, indeed, the person who helped me edit the video is not a councillor) whereas Council resources are not so easily accessible and b) the Council’s YouTube channel does not contain any copyright statements or guidance as to how the videos can be used. In the absence of a specific statement on use of the videos, it is therefore reasonable to assume the Council relies upon YouTube’s generic rules on copyright and fair use – which include criticism, quotation and reporting. My use of the video could be said to constitute all three. Moreover, in a previous Standards Complaint in which the Council’s official social media channels were responding to me, via Facebook, arguing against points I had made and offering the Mayor’s opinions, I alleged that this represented a misuse of Council resources and I was told it did not amount to that”

Cllr Scargill also said, “Whilst an opinion has been obtained as part of the investigation to say a YouTube video relates to resource, this was not known at the time (indeed it was unclear to the investigator, who had to seek independent advice) and so I cannot therefore have been expected to consider this resource, particularly since the Council has failed to include on its YouTube channel any comments on use of its videos and, therefore, indicates that it is relying upon YouTube’s model terms of use. Further, I also cite in my defence the fact I was told – in response to a Standards Complaint I made – that Council social media did not count as “resource””.

## **8 EVALUATION AND CONCLUSIONS**

### **8.1 WAS THE SUBJECT MEMBER IN CAPACITY?**

#### **8.1.1 WHAT DOES “IN CAPACITY” MEAN?**

We first examine the question of capacity. The Localism Act 2011 is silent on the matter of what being “in capacity” actually means and, at time of writing, there is no case law on the interpretation of “acting in [the]capacity” of a member or co-opted member” under the Localism Act 2011.

However, the issue of where the boundaries lie between a councillor acting as a councillor and a councillor acting as a private citizen has been explored in a number of cases which predate the 2011 Localism Act but nevertheless remain relevant.

In **Livingstone v Adjudication Panel for England [2006]** Mr Justice Collins considered the scope of the Code in relation to when a councillor is acting in their official capacity. Mr Justice Collins stated at paragraphs 27 to 29:

“Conduct which is regarded as improper and meriting some possible sanction will often be constituted by misuse of a councillor’s position. He may be purporting to perform his functions if, for example, he seeks to obtain an advantage by misusing his position as a councillor. Such misuse may not amount to corruption; it may nonetheless be seen not only to be improper but to reflect badly on the office itself. If the words “in performing his functions” are applied literally, it may be said that such misuse, and other misconduct which is closely linked to his position as such may not be covered.

... Thus where a member is not acting in his official capacity (and official capacity will include anything done in dealing with staff, when representing the council, in dealing with constituents’ problems and so on), he will still be covered by the Code if he misuses his position as a member. That link with his membership of the authority in question is in my view needed. This approach is very similar to that adopted in Scotland and in my judgment accords with the purpose of the Act and the limitations that are appropriate. It is important to bear in mind that the electorate will exercise its judgment in considering whether what might be regarded as reprehensible conduct in a member’s private life should bring his membership to an end in due course...

The Livingstone judgment was considered in detail in “**Bartlett v Milton Keynes Council [2008] APE 0401**” in an appeal from the local standards committee. In the Tribunal’s view, the Livingstone judgment established that for a councillor to be acting in an official capacity:

- the councillor should be engaged in business directly related to the Council or constituents;
- the link between the councillor’s office and the conduct should have a degree of formality.

**First Tier Tribunal Case No. LGS/2011/0537** appears to be particularly pertinent here in that Judge Laverick was specifically considering a councillor’s use of social media and the capacity in which the councillor was writing in an online blog. Judge Laverick stated that it was perfectly reasonable for a councillor to write posts and make comments in their private capacity even if their social media account clearly identified them as a councillor; the key determining factor when it came to deciding the capacity in which the councillor was writing was whether the content of

the relevant post was sufficiently connected to Council business in order for the Code of Conduct to be engaged.

So, here (and in other cases not examined here) there is case law which helps inform the question of what “in capacity” means.

[In his review of the Report whilst it was in draft Cllr Scargill said, “I question the extent to which political campaigning is conducted in one’s capacity as a councillor – as opposed to as a party political activist – and would suggest that the video was produced in my role as the latter, not least because it was co-produced and designed by non-councillors within the North Tyneside Conservatives for campaigning purposes. The name of my Facebook page ‘Cllr Olly Scargill – Your Local Campaigner’ indicates that it serves the dual purpose of offering Council updates and political campaigning – and those things are not always the same.

“It is alleged that I have attempted to encourage negative perceptions. This is the role of the opposition – we are there to scrutinise, to campaign and to agitate.

“Using clippings from debates and from interviews is standard practice in political campaigning. Both main parties do it – and they do so on a national scale, using House of Commons footage.”]

### **8.1.2 CONCLUSION - WAS CLLR SCARGILL IN CAPACITY?**

**On the basis of the evidence available to us and the balance of probability (and bearing in mind the instances we have set out in Section 8.1.1 above) we conclude that Cllr Scargill was writing in his capacity as a North Tyneside Councillor when he made the post on his Facebook page. He was responsible for making the post and confirmed to us when we spoke that he had edited the video clip. We do not accept that Cllr Scargill was indulging in “political campaigning” or “party political activism” in making the post, as he latterly suggested. Rather we conclude that he was commenting as a Conservative member on matters relating to North Tyneside Council (and specifically on Mayor Redfearn’s role in the 21<sup>st</sup> July Full Council meeting which he had himself attended as a member for the Collingwood ward a few days before). The Code is therefore engaged.**

## **8.2 EVALUATION OF EVIDENCE**

### **8.2.1 FREEDOM OF EXPRESSION**

One of the allegations made by the Complainants was that Cllr Scargill breached the Code by failing to show respect to the Mayor (paragraph 1.1 of the Code).

In considering whether Cllr Scargill’s actions were such as to breach the threshold of the Code we must consider the rights to freedom of expression. In doing so we have regard to Article 10 of the European Convention on Human Rights (ECHR) which provides:

“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...the protection of the reputation or rights of others ...”

In considering these matters it is important to note the words of Collins J in the case of *Livingstone v The Adjudication Panel for England [2006]* who said that the right to freedom of expression is a crucially important right in a democratic society and it is clear that it may only be interfered with where there are convincing and compelling reasons within the terms of Article 10(2) justifying that interference. A key issue for determination is thus whether a finding of a breach of the Code on the facts as found, would represent no greater an impairment to an elected member’s right to freedom of expression than is necessary to accomplish the legislative objective of the Code. In assessing the extent to which a councillor’s comments should be restricted, the importance of freedom of political expression in the political sphere needs to be borne in mind.

The issue of the extent to which a councillor’s right to freedom of expression, and even the right to be offensive, can be constrained by a code of conduct was explored in detail in the case of *Heesom v Public Service Ombudsman for Wales*. In that case Mr Justice Hickinbottom considered a councillor’s right to free speech in some detail. His considerations drew attention to a number of earlier cases in which various propositions could be derived. Four of those appear to be particularly pertinent here.

1. Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.
2. Whilst, in a political context, Article 10 of the European Convention on Human Rights (ECHR) protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.
3. Past cases draw a distinction between fact on the one hand, and comment on matters of public interest involving value judgement on the other. As the latter is unsusceptible of proof, comments in the political context amounting to value judgements are tolerated even if untrue, so long as they have some – any – factual basis . What amounts to a value judgement as opposed to fact will be generously construed in favour of the former; and even where something expressed is not a value judgement but a statement of fact (e.g. that a council has not consulted on a project), that will be tolerated if what is expressed is said in good faith and there is some reasonable factual basis (even if incorrect) for saying it, “reasonableness” here taking account of the political context in which the thing was said.
4. Politicians are required to have a thick skin and be tolerant of criticism and other adverse comment.

The “Guidance on Local Government Association Model Councillor Code of Conduct” (“the Guidance”) which provides guidance on the LGA Model Code and which is referenced in the Council’s Code of Conduct says the following about Freedom of Expression:

*“The requirement to treat others with respect must be balanced with the right to freedom of expression. Article 10 of the European Convention on Human Rights protects your right to hold your own opinions and to express them freely without government interference. This includes the right to express your views aloud or in writing, such as in published articles or leaflets or on the internet and social media. Protection under Article 10 extends to the expression of views that may shock, disturb, or offend the deeply-held beliefs of others.*

*However, Article 10 is not an absolute but a qualified right which means that the rights of the individual must be balanced against the interests of society. Whether a restriction on freedom of expression is justified is likely to depend on a number of factors, including the identity of the speaker, the context of the speech and its purpose, as well as the actual words spoken or written. Democracy depends on people being free to express, debate and criticise opposing viewpoints. The courts have generally held that the right to free expression should not be curtailed simply because other people may find it offensive or insulting. A balance must still be struck between the right of individuals to express points of view which others may find offensive or insulting, and the rights of others to be protected from hatred and discrimination.*

*Freedom of expression is protected more strongly in some contexts than others. In particular, a wide degree of tolerance is accorded to political speech, and this enhanced protection applies to all levels of politics, including local government. Article 10 protects the right to make incorrect but honestly made statements in a political context but it does not protect statements which the publisher knows to be false. Political expression is a broad concept and is not limited to expressions of or criticism of political views but extends to all matters of public administration including comments about the performance of public duties by others. However, gratuitous personal comments do not fall within the definition of political expression.”*

### **8.2.2 LOCAL GOVERNMENT ASSOCIATION**

When considering whether a councillor’s behaviour is disrespectful we must therefore take into account and give considerable weight to their right to freedom of expression. However we must also reflect upon whether, in exercising that right, they have crossed the line into personal abuse.

With that in mind we note the UK Local Government Associations: Joint Statement on Civility in Public Life. That says that “The intimidation and abuse of Councillors, in person or otherwise, undermines democracy; it can prevent elected members from representing the communities they serve, prevent individuals from standing for election and undermine public trust in democratic processes. These harmful behaviours, whether occurring towards, between or by elected members are entirely unacceptable”.

Cllr Scargill appeared to recognise that when we spoke to him. When we asked him about what had been described by one of the Complainants as a “heavily edited and doctored clip”, he replied, “These are the sort of tactics that are used in politics nationally. They put a lot of people off from going into politics.”

We further note the Local Government Association’s “Debate Not Hate” campaign which has been endorsed by many councils across the country. It aims to raise public awareness of the role of councillors in their communities, encourage healthy debate and improve the responses and support for local politicians facing abuse and intimidation.

We also note the work of the Jo Cox Foundation and the reference made to Jo Cox by at least one speaker during the debate on Motion 3. She had herself suffered what she saw as unacceptable abuse “on the doorstep”. In February 2023 the Jo Cox Foundation launched the Jo Cox Civility Commission to “raise awareness of the detrimental impact on individuals, democracy and society, of the current levels of abuse and intimidation in political life.”

### **8.2.3 RESPECT**

The Guidance says the following about **respect**:

*“Showing respect to others is fundamental to a civil society. As an elected or appointed representative of the public it is important to treat others with respect and to act in a respectful way. Respect means politeness, courtesy and civility in behaviour, speech, and in the written word. It also relates to all forms of communications councillors undertake, not just in meetings. Rude, offensive, and disrespectful behaviour lowers the public’s expectations and confidence in its elected representatives.*

*“The key roles and responsibilities of councillors; representing and serving your communities and taking decisions on their behalf, require councillors to interact and communicate effectively with others. Examples of councillor interaction and communication include talking to constituents, attending local authority meetings, representing the local authority on outside bodies, and participating in community meetings and events. In turn this means that as a councillor you are required to interact with many different people, often from diverse backgrounds and with different or conflicting needs and points of view.*

*“You will engage in robust debate at times and are expected to express, challenge, criticise and disagree with views, ideas, opinions, and policies. Doing these things in a respectful way will help you to build and maintain healthy working relationships with fellow councillors, officers, and members of the public, it encourages others to treat you with respect and helps to avoid conflict and stress. Respectful and healthy working relationships and a culture of mutual respect can encourage positive debate and meaningful communication which in turn can increase the exchange of ideas, understanding and knowledge.*

*“Examples of ways in which you can show respect are by being polite and courteous, listening and paying attention to others, having consideration for other people’s feelings, following protocols and rules, showing appreciation and thanks and being kind. In a local government context this can mean using appropriate language in meetings and written communications, allowing others time to speak without interruption during debates, focusing any criticism or challenge on ideas and policies rather than personalities or personal attributes and recognising the contribution of others to projects.”*

When discussing **disrespectful behaviour** the Guidance says:

*“Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurs are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurs, who observes the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompts the alleged disrespect.*

*Disrespectful behaviour can take many different forms ranging from overt acts of abuse and disruptive or bad behaviour to insidious actions such as bullying and the demeaning treatment of others. It is subjective and difficult to define. However, it is important to remember that any behaviour that a reasonable person would think would influence the willingness of fellow councillors, officers or members of the public to speak up or interact with you because they expect the encounter will be unpleasant or highly uncomfortable fits the definition of disrespectful behaviour.*

*Examples of disrespect in a local government context might include rude or angry outbursts in meetings, use of inappropriate language in meetings or written communications such as swearing, ignoring someone who is attempting to contribute to a discussion, attempts to shame or humiliate others in public, nit-picking and fault-finding, the use of inappropriate sarcasm in communications and the sharing of malicious gossip or rumours.*

*Disrespectful behaviour can be harmful to both you and to others. It can lower the public's expectations and confidence in you and your local authority and councillors and politicians more generally. It influences the willingness of fellow councillors, officers, and the public to speak up or interact with you because they expect the encounter will be unpleasant or uncomfortable. Ongoing disrespectful behaviour can undermine willingness of officers to give frank advice, damage morale at a local authority, and ultimately create a toxic culture and has been associated with instances of governance failure.*

Addressing the question of whether the Respect provision of the Model Code is a gag on councillors, the Guidance says:

*"This provision of the Code (Paragraph 1) is not intended to stand in the way of lively debate in local authorities. Such discussion is a crucial part of the democratic process. Differences of opinion and the defence of those opinions through councillors' arguments and public debate are an essential part of the cut and thrust of political life. Councillors should be able to express their opinions and concerns in forceful terms. Direct language can sometimes be appropriate to ensure that matters are dealt with properly. The code is not intended to stifle the expressions of passion and frustration that often accompany discussions about local authority business."*

#### **8.2.4 DISREPUTE**

The Guidance says the following about **disrepute**:

*"As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. Article 10 of the European Convention on Human Rights protects your right to freedom of expression, and political speech as a councillor is given enhanced protection but this right is not unrestricted. You should be aware that your actions might have an adverse impact on your role, other councillors and/or your local authority and may lower the public's confidence in your ability to discharge your functions as a councillor or your local authority's ability to discharge its functions.*

*In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor's behaviour in office will bring their **role** into disrepute if the conduct could reasonably be regarded as either:*

- 1. reducing the public's confidence in them being able to fulfil their role; or*
- 2. adversely affecting the reputation of your authority's councillors, in being able to fulfil their role.*

*Conduct by a councillor which could reasonably be regarded as reducing public confidence in their local authority being able to fulfil its functions and duties will bring **the authority** into disrepute.*

*For example, circulating highly inappropriate, vexatious or malicious e-mails to constituents, making demonstrably dishonest posts about your authority on social media or using abusive and*



*threatening behaviour might well bring the role of councillor into disrepute. Making grossly unfair or patently untrue or unreasonable criticism of your authority in a public arena might well be regarded as bringing your local authority into disrepute.”*

Of disrespect the North Tyneside Council Code of Conduct says, *“Members are trusted to make decisions on behalf of their community and their actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. Members should be aware that their actions might have an adverse impact on them, other members and/or the Authority and may lower the public’s confidence in their or the Authority’s ability to discharge their/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring the Authority into disrepute.*

*Members are able to hold the Authority and fellow members to account and are able to constructively challenge and express concern about decisions and processes undertaken by the Authority whilst continuing to adhere to other aspects of this Code of Conduct.”*

#### **8.2.5 CLLR SCARGILL’S FACEBOOK POST**

With all this as background we have carefully considered Cllr Scargill’s initial post on his Facebook page as well as the comments/replies that were made by Cllr Scargill and many others subsequent to that post.

We have watched the whole Full Council debate on Motion 3 during which Mayor Redfearn spoke. We have listened to, and attempted to distil, the main points arising out of the debate to better understand its context and content.

We now make the following observations based on the evidence available to us and on the balance of probability.

It appears indisputable that the video clip taken from the Full Council meeting has had “special effects” added to it and that those special effects present Mayor Redfearn in a negative way with the presumed aim of securing political advantage.

Cllr Scargill did not deny that he had added music and subtitles to the video footage before publishing it though he had said in his response to the Complaints (see Section 5.4) that “the clip of the Elected Mayor’s speech has no content added or removed”. He sought to downplay the amount of editing that had been done and described his actions as “the sort of tactics that are used in politics nationally”. He also said, when commenting on the Report whilst it was in draft, that it was the role of the opposition to “encourage negative perceptions”; “to scrutinise, to campaign and to agitate”. He suggested too that he was trying to introduce a comedic element to the end of the clip he posted.

It is equally indisputable that the Mayor’s speech has been edited at beginning and end so that what appeared to us to be respectful and conciliatory references to former Conservative colleagues have been excised. What is left makes it possible to present the Mayor’s words out of their immediate context, to repurpose them for political ends and to portray them as a standalone contribution that was nothing more than a personal attack on Cllr Scargill.

In reflecting upon whether Cllr Scargill’s post was disrespectful we must take the circumstances into account. We tend to agree with Cllr Scargill’s opinion, which he repeated when commenting on the Report whilst it was in draft, that the Mayor was speaking in somewhat disparaging terms

about him (and very likely about another councillor). We did though detect sadness and regret in her reference to “brilliant, clever young people who have a future ahead of them”. The tone of what she said appeared, perhaps, to be that of a schoolteacher drawing on long experience to chastise and at the same time give advice to an errant pupil. We do not conclude that the Mayor was delivering what might be described as a “venom[ous]” attack (a word used by one of those responding to the post).

We do not accept that Mayor Redfearn was attacking Cllr Scargill for “standing up for his residents”, as he suggested, nor was there any indication at all in what she said that she was trying to stop him doing that. Mayor Redfearn’s contribution was just one of several made by speakers in the debate from every part of the Chamber who spoke about the need for respect, honesty and integrity in politics. When commenting on the Report whilst it was in draft, Cllr Scargill said that “there are disagreements about ... which motion the Mayor was speaking to in the clip”. It appears to us that there is no doubt at all that the Mayor was speaking to Motion 3.

Whilst the Mayor’s contribution, albeit made quite early in the debate, contained an undoubtedly personal element (as did others during the debate) she made no reference at all to saving green space, the Dutch-style roundabout, tackling anti-social behaviour or 24 hour care at Rake Lane Hospital. It appears to us that, rather than attacking Cllr Scargill’s *ideas and policies*, she was attacking the *methods* he (and others) had used and the *behaviours* they had exhibited to promote those ideas and policies and gain electoral support during the election campaign.

When commenting on the Draft Report Cllr Scargill said, “the only campaigns I have been involved in which had got her attention or caused her to comment [were] in respect of the Dutch-style roundabout in my ward and the A&E campaign”. It was, he said, “too literal a reading of the meeting” to suggest that the Mayor was not speaking on the roundabout motion whilst she was speaking on Motion 3. “Civility in politics” was, he said, simply a “heading” that allowed her to debate other grievances. To focus “only on one meeting ... distort[ed] the wider context in which the video was shared”.

In other words, Cllr Scargill was asking us to believe that the Mayor’s comments, made during Motion 3, were in fact applicable to a later motion. His own reading of the meeting rather than our own “too literal” reading entitled him, he appeared to be saying, to suggest to his residents that the Mayor was attacking him for standing up for them. Whilst we admire the logic, we consider it to be sophistic and we do not accept it. The Mayor was speaking to Motion 3. She was speaking about the need for civility in politics.

In suggesting that Mayor Redfearn was attacking him for “standing up for his residents” we conclude that Cllr Scargill was misleading those who read his post. He suggested that both in his initial post and later too when replying to comments made on the thread that followed.

When asked on the thread what the Mayor was referring to when she spoke Cllr Scargill twice replied that it was a response to his election campaign. He suggested that he had been treated in this way because he had “disagreed with her point of view”. In fact the Mayor’s words were a clear response to the *methods* and *tactics* (Cllr Scargill’s word) that she alleged were used by him and others during that election campaign and to his own *behaviours* during the campaign, rather than to the ideas and policies he espoused during the campaign itself.

Motion 3 appears to have been tabled mainly in response to what happened during the May 2022 election campaign some three months earlier (so it was still relatively fresh in the mind), and it appears to us that when she spoke Mayor Redfearn’s entire focus was on the need for all members to act with honesty, integrity and respect. She was expressing the view, albeit in somewhat personal terms, that Cllr Scargill (and perhaps others) had failed to exhibit such values during the election campaign, something he denied when commenting on the Report whilst it was in draft

We do not share Cllr Samuel’s view that Cllr Scargill was implying that there was a link between what the Mayor said and the later Motion 5, which was about the Dutch-style roundabout, though at one point in the Facebook thread Cllr Scargill did mention the Rake Lane roundabout.

Once again circumstances are important. We tend to the view that, of itself, *the video clip alone* (without the Mayor’s words and the accompanying text which sought to set what she said in a particular context) was a not unreasonable response to the Mayor’s disparaging comments which were apparently directed at Cllr Scargill during the debate on Motion 3. The video clip alone - “immoderate”, “colourful” and “offensive” though it probably was to some - can be seen as a tit-for-tat response to what Cllr Scargill saw as a disparaging attack on him during the debate. Whilst the video clip carried with it an element of disrespect, we believe that the Mayor was required “to have a thick skin and be tolerant of criticism and other adverse comment.”

However, we believe that we must take into account not just the video clip but also the part of the Mayor’s speech that was chosen as well as the accompanying text – the initial Facebook post by Cllr Scargill and the comments and replies that followed - in deciding whether Cllr Scargill breached the Code. We make the following observations.

- As we have already noted above, Cllr Scargill presented the edited clip from Mayor Redfearn’s speech outside the context in which it was originally made. Cllr Scargill, who was present throughout the debate, knew that she, like all other contributors to the debate, was speaking in support of Motion 3 and that that motion was about the need for honesty, integrity and respect in politics.
- Cllr Scargill edited the video clip in order to present the Mayor’s words as if they were a response to the issues on which he campaigned during his election campaign. He knew it to be false to suggest to readers that the Mayor was attacking him for “standing up for his residents”. There was no factual basis for that and we found no evidence at all to suggest that she was doing that when she spoke.
- Many of the comments that followed Cllr Scargill’s post were undoubtedly unpleasant, gratuitous, demeaning and abusive towards the Mayor. Some were focused on personality and personal characteristics (including her age). In making his post in the way that he did Cllr Scargill appears to us to have invited those comments and he cannot have been surprised at their tone. He appears to have made no attempt to moderate the comments and we believe that in presenting her words in the context that he did he was knowingly stirring up abuse of, and disrespect for, the Mayor and potentially inciting hostility against her. We noted Cllr Scargill’s comment that “it’s just what happens and I am not convinced that those comments were “over the line””.
- At time of writing Cllr Scargill’s Facebook page has 905 followers. His post therefore appears likely to have had a wide audience in his Collingwood ward and in North Tyneside

more widely. At time of writing the post has attracted 236 comments and there have been 56 shares. This was not a post made in a small social media “echo chamber”.

- In making his post Cllr Scargill appeared to be “thumbing his nose” at Motion 3, which he and all other councillors had supported only five days before. Despite having given his support to Motion 3 he appears to us to have been persisting in the same kinds of behaviours that had led to the motion being tabled in the first place.
- In the opinion of leading Counsel (an opinion to which we defer), the YouTube record of the Full Council meeting was a “Council resource” and Cllr Scargill’s editing of that resource, when presented alongside his accompanying text, was done for political purposes.
- We did not agree with Alison Austin’s view, expressed when commenting on the Draft Report, that Cllr Scargill had “voted for a council framework designed to ensure respect and honest campaigning, but immediately went back on that” and had thus brought the Council into disrepute. We had considered this but had concluded that Cllr Scargill did not reduce public confidence in the Council being able to fulfil its functions and duties and hence he had not brought the Authority into disrepute.

### **8.3 CLLR SCARGILL’S FACEBOOK POST - CONCLUSION**

Based on the evidence available to us and the balance of probability, we conclude that:

- 1. Cllr Olly Scargill knew it to be false to suggest to readers of his Facebook post that the Mayor was attacking him for “standing up for his residents”. As Cllr Scargill knew his comments be false his comments are not protected by Article 10 and a restriction on his freedom of expression is justified. Furthermore, Cllr Redfearn has the right to be protected from hatred and discrimination.**
- 2. Cllr Scargill breached Paragraph 1.1 of the Code in that he failed to treat Mayor Norma Redfearn with respect.**

Cllr Scargill added special effects to and edited Mayor Redfearn’s speech to portray her in a negative light. He posted the video clip on Facebook and suggested (both in his initial post and later when replying to comments) that Mayor Redfearn was attacking him for “standing up for his residents” which he knew to be untrue. In making his post in the way that he did he invited unpleasant, gratuitous, demeaning and abusive comments towards the Mayor and appears to have made no attempt to moderate the comments. He knowingly stirred up abuse and disrespect for the Mayor and potentially incited hostility against her. We believe that this behaviour, directed towards Cllr Redfearn was unreasonable and demeaning and that a reasonable person would think that this behaviour would influence the willingness of fellow councillors to speak up or interact with Cllr Scargill in future because they would expect that the encounter would be unpleasant or highly uncomfortable.

- 3. Cllr Scargill breached Paragraph 5.1 of the Code in that he brought his role as a councillor into disrepute.**

By making a disingenuous and misleading Facebook post and making comments about the Mayor’s speech which he knew to be untrue Cllr Scargill’s conduct could reasonably be regarded as behaviour which could reduce the public’s confidence in him being able to fulfil his role.

4. **Cllr Scargill breached Paragraph 7.1 and 7.2b of the Code in that he misused Council resources (the Council’s YouTube record of the Full Council Meeting on 21<sup>st</sup> July 2022) and failed to ensure that the resources were not used for political purposes.**

We are persuaded by, and rely here, on the advice and argument of Peter Oldham KC of 11KBW rather than on Cllr Scargill’s counterargument. We mention here Cllr Scargill’s assertion that he had previously been told that “Council social media did *not* count as a “resource”” but we consider it beyond the scope of the Investigation to comment on it.

## 9. RECOMMENDATION

On the basis of the conclusions above we make the following recommendations:

**That the Monitoring Officer should act in accordance with Paragraph 10 of the “Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members (May 2022)”.**

Paragraph 10 of the Arrangements sets out “What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?” and reads as follows:

### a. Local Resolution

Where the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct, there may still be an opportunity for local resolution, avoiding the necessity of a hearing. An investigation report may cause a member to recognise that his/her conduct was at least capable of giving offence, and /or identify other appropriate remedial action, and the complainant may be satisfied for instance, by recognition of fault or an apology. It would only be appropriate for the Monitoring Officer to agree a local resolution at this stage after consultation with one of the Authority’s Independent Persons and the Chair of the Standards Committee. In addition, this would be conditional on the complainant being satisfied with the outcome. A summary report on any local resolution of a complaint would be reported to the Standards Committee for information.

### b. Referral for Hearing

If local resolution is not possible, the Monitoring Officer will then refer the matter for a hearing before the Committee/Sub-Committee.

## **APPENDIX 1 – DOCUMENTS AND SOURCES**

In the course of the Investigation we reviewed a variety of source materials. These are listed below.

- (1) North Tyneside Council website <https://my.northtyneside.gov.uk/>
- (2) North Tyneside Council Code of Conduct for Elected Members and Co-opted Members – adopted on 19th May 2022 <https://my.northtyneside.gov.uk/sites/default/files/web-page-related-files/Code%20of%20Conduct%20-%20May%202022.pdf>
- (3) North Tyneside Council Code of Conduct for Member and Co-opted Members Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members (May 2022) <https://my.northtyneside.gov.uk/sites/default/files/web-page-related-files/LOCAL%20ARRANGEMENTS%20May%202022.pdf>
- (4) North Tyneside Wikipedia entry [https://en.wikipedia.org/wiki/North\\_Tyneside](https://en.wikipedia.org/wiki/North_Tyneside)
- (5) North Tyneside Council Wikipedia entry [https://en.wikipedia.org/wiki/North\\_Tyneside\\_Council](https://en.wikipedia.org/wiki/North_Tyneside_Council)
- (6) Letters of Engagement Jacqueline Laughton to Paul Hoey 21<sup>st</sup> November 2022
- (7) Complaint Form and attachments Cllr Willie Samuel – 1<sup>st</sup> August 2022
- (8) Complaint Form and attachments Ms Alison Austin and Mr Frank Austin – 5<sup>th</sup> August 2022
- (9) Acknowledgement letters Jacqueline Laughton to Complainants – 15<sup>th</sup> August 2022
- (10) Notice of Complaint letters Jacqueline Laughton to Cllr Olly Scargill – 15<sup>th</sup> August 2022
- (11) Papers from Assessment Meeting 7<sup>th</sup> November 2022
- (12) Assessment Decision letters Jacqueline Laughton to Complainants and Cllr Olly Scargill – 18<sup>th</sup> November 2022
- (13) Video Full Council 21<sup>st</sup> July 2022 <https://www.youtube.com/watch?v=dxAINuGP2JI>
- (14) Cllr Olly Scargill Facebook page <https://www.facebook.com/CllrOllyScargill/> now renamed Cllr Olly Scargill & John Johnsson. The relevant post and the related comments are to be found on and after 26<sup>th</sup> July 2022.
- (15) Advice Note “In the matter of YouTube recording of a Full Council Meeting” prepared by Peter Oldham KC of 11KBW
- (16) North Tyneside Council - Protocol on use of the Authority’s Resources and Support for Members
- (17) Guidance on Local Government Association Model Councillor Code of Conduct <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#respect>
- (18) UK Local Government Associations: Joint Statement on Civility in Public Life <https://www.local.gov.uk/our-support/guidance-and-resources/civility-public-life-resources-councillors/uk-local-government>
- (19) Local Government Association (LGA) Campaign “Debate Not Hate” <https://www.local.gov.uk/about/campaigns/debate-not-hate>
- (20) Jo Cox Foundation website <https://www.jocoxfoundation.org/>

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