

North Tyneside Council Report to Standards Sub-Committee Date: 28 September 2023

ITEM 2

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

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

Wards affected: All

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 NT09.2022-23.

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; 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 complaint: NT09.2022-23.

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 Council'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 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 NT09.2022-23.

3.6 Attached as Appendix C is the Investigating Officer's reports in relation to Complaint NT09.2022-23.

4.0 Appendices (if any)

Appendix A - Hearing Procedure
Appendix B - Pre-Hearing Process Summary
Appendix C - 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

Member subject of allegation:	Councillor Liam Bones
Complainant(s):	Mr Jim Allan
Case Reference Numbers:	NT09.2022-23
Chair for meeting:	Councillor F Lott
Independent Persons:	Dr S Green, Mr D Entwisle, Mrs K Roffe
Monitoring Officer:	Mr Stephen Ballantyne
Investigating Officer:	Mr Colin Jones
Democratic Services Officer:	Ms Joanne Holmes
Time, Date and Place of Hearing:	To be confirmed following consultation with the Chair
Time, Date and Place of Pre-Hearing Process Summary Meeting:	11.00a.m. Friday 25 August 2023, Quadrant East, the Silverlink North, Cobalt Business Park

Summary of allegation:

The complainant, Mr Jim Allan, alleges that:

- a. Councillor Liam Bones in a Facebook post and on a website operated by him posted a story about Mr Allan containing inaccuracies. He also alleges that Councillor Bones has used “privileged information” only available to him as a Councillor.
- b. Councillor Bones failed to show Mr Allan respect when he stated on social media that Mr Allan failed to undertake his office of Councillor when in fact Mr Allan was suffering from ill health. Mr Allan said that was a lie. Mr Allan said that despite his illness, he continued to undertake casework and attended online meetings and was only unable to attend “in person” meetings. Councillor Bones it is said either chose to ignore his personal circumstances or published the story complained about without knowing Mr Allan’s circumstances. This it is said was an attempt to “degrade” Mr Allan’s character and record in the Camperdown ward.
- c. Councillor Bones used information that was confidential and only available to him because he was a Councillor. Mr Allan says that Councillor Bones published the story about him on his website and on Facebook when it was not publicly known the reason for the by-election. The Notice of Election on the Council website simply stated that there was to be a by-election in the Camperdown ward. Mr Allan presumes that Councillor Bones knew the reason for the by-election through discussions that he had with Council officers which was of a confidential nature.

- d. Councillor Bones' post was deceitful and dishonest and suggested that Mr Allan was not undertaking work as a Councillor when Councillor Bones had no knowledge of what he was doing in that regard. Mr Allan said that he could provide countless bits of evidence of the casework undertaken by him over a 6-month period including correspondence with different community groups in the ward. Mr Allan also said that he attended Microsoft Teams meetings including ward briefings. It was both deceitful and dishonest to suggest that Mr Allan was not "doing his job" and that he was paid over £150,000 in allowances during his time on the Council for doing nothing, which is fundamentally dishonest.
- e. Councillor Bones' use of Councillor Allan's official Council photograph in the article posted by him was a use of Council resources for political purposes.

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.

4. Confidentiality and access to exempt information

4.1 You must not disclose information:

a) given to you in confidence by anyone

b) acquired by you which you believe, or ought reasonably to believe, is of a confidential nature, unless -

i. you have received the consent of a person authorised to give it;

ii. you are required by law to do so;

iii. the disclosure is made to a third party for the purposes of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or

iv. the disclosure is:

a. reasonable and in the public interest; and

b. made in good faith and in compliance with the reasonable requirements of the Authority; and

c. you have consulted with the Monitoring Officer prior to its release.

4.2 You must not use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer, or your business interests.

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

Councillor Bones wholly disputes the findings of the report. He states that he has no confidence in the impartiality of the Standards Committee, which is made up mainly of Labour councillors. He therefore assumes that he will be found "guilty regardless".

Appendix 1 is an extract of the Investigator's Report which sets out Councillor Bones' comments on the findings of the Independent Investigator's findings.

Councillor Bones 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 2 of the Investigation Report.

Application of the Code of Conduct

The Independent Investigator considered that the article written by Councillor Bones did engage him in business directly related to the Council and the constituents and therefore the Code of Conduct was engaged. His view is that the Government's intention when drafting the Localism Act would be undermined if Councillors were permitted to make comments about Councils or fellow Councillors or officers, however disrespectful or misleading, and not be subject to the Code of Conduct by simply failing to identify themselves explicitly as a Councillor when making those comments. (paras 3.6.1 and 3.6.2).

- **Treating Others With Respect**

The Investigator found that Councillor Bones **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 2.1.1).

- **The Use of Confidential Information**

The Investigator found that Councillor Bones has **not** breached the Code in relation to:

Part 1- General Conduct, Paragraph 4 and the prohibition on disclosing information given to a Member in confidence by anyone and/or not using knowledge gained solely as a result of the role of Councillor for the advancement of the Member, their friends, their family, their employer or their business interests. (para 2.1.2).

- **Bringing the Authority into Disrepute**

The Investigator found that Councillor Bones **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 2.1.3).

- **Use of Authority Resources**

The Investigator found that Councillor Liam Bones has **not** breached the Code in relation to:

Part 1- General Conduct, Paragraph 7 and Members not being permitted to use the Authority's resources and facilities.

Matters taken into account by the Investigating Officer:

- Councillor Bones did not dispute that he was the author of the article in question. (para 6.1.1).
- The Investigator's reading of the article in which it was suggesting that former Councillor Allan had claimed £150,000 without attending any Council meetings. (para 6.1.1)
- That due to health reasons, Councillor Allan had not attended formal meetings of the council in the months leading up to June 2022 and as no mitigating action had been taken either by Mr Allan or the Council, he had been automatically disqualified as an elected member in line with the legal requirements under the Local Government Act 1972 (para 6.1.1)
- Looking through the Council's website it is clear that Councillor Allan had attended many Council meetings prior to becoming poorly. (para 6.1.1)
- The **Heesom v Public Ombudsman of Wales** decision, and the reference therein to an enhanced freedom of expression being afforded to politicians pursuant to Article 10 of the European Convention of Human Rights was considered when balancing that right against the Code of Conduct and the need to show respect (paras 6.1.3 to 6.1.14).
- Article 10 does not protect statements (or articles) which the publisher knows to be false. (para 6.1.12).

- Members attendance at Council meetings is recorded on the Council's website and so is publicly available. (para 6.2.1.2)
- Information about Members allowances is published on the Council's website and is easily accessible for members of the public or could be obtained by use of a Freedom of Information request. (para 6.2.1.4)
- The LGA Guidance in relation to "disrepute" and the definition of disrepute given in the Guidance. (para 6.2.3).

Attendance at the hearing (including representatives)

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

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

Witnesses Attending

It is unknown if Councillor Bones 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 the Councillor Bones received on 24 August 2023. In that correspondence Councillor Bones suggested that the complaint against him 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 23 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 Bones 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 Bones 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 Bones.

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 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.

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 additional time had been provided to Councillor Bones to provide the information requested.

Furthermore, the Monitoring Officer explained that the Council had also received correspondence from Mr Allan, the Complainant in this matter. Mr Allan had expressed his concern at the time this matter was taking to proceed to a final hearing. He indicated that the delay was causing him further distress and he wished the matter concluded as soon as possible.

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 Bones did not proceed to a hearing just because it had not been heard within three months of the completion of the investigation report, bearing in mind the delay in progressing to the Hearing had been as a result of extensions in time being provided to Councillor Bones to provide his response to the investigation report. 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 to formally depart from the arrangements with respect to the timescale to allow the hearing to proceed.

Date Pre-Hearing Process Summary Completed: 25 August 2023

A handwritten signature in black ink, appearing to read 'F. Lott', with a long horizontal flourish extending to the right.

Signed _____

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

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Stephen Ballantyne

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

Dear Cllr Bones

Further to your email below and our conversation on Friday afternoon with respect to the complaint made against you by Mr J Allan under reference number NT09.2022-23.

You are correct to state that the Independent Investigator's report was completed on 23 May 2023. This is the date that Mr Barton of my office sent a copy of the completed report to you. Since that date Mr Barton contacted you by email on 7 June, 26 June, 5 July and 20 July. In all of 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 two occasions Mr Barton copied to you the Model Response Forms A to E.

You responded to Mr Barton only once. On 5 July you apologised for the delay in returning the Forms, stating that you had been out of the country and said that you would let him have the Forms as soon as possible. In Mr Barton's response of 20 July, he advised you that he was arranging a meeting with the Chair of the Standards Committee so that the Pre-Hearing Review process could be undertaken. The Pre-Hearing Review process is part of the procedure for managing complaints that are to proceed to full hearing and is a requirement of the Local Arrangements document. You did not reply to Mr Barton's email of 20 July nor did you provide the Forms.

On Monday 21 August we met about other matters with the Chief Executive but at the end of that meeting I advised you that I was to meet with the Chair of the Standards Committee on Friday 25 August to undertake the Pre-Hearing Review. I asked you again if you intended to submit the Forms A to E so that they could be considered as a part of the Pre-Hearing process. You said that you did not know whether you would submit the forms but that you would let me know either way by Thursday 24 August.

On 24 August you spoke to me, and it is at this point that you suggested that the complaints 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. You followed that up with your 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 to ensure that the process was as fair to you as possible and that your comments on the Investigation report were documented. It must be noted that you gave the impression that you were going to provide a response up until I met with you on 21 August.

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

aware that no response had been received from you initially and that when you did respond on 5 July you indicated that you would submit the Forms as soon as possible.

You should note that the Council has also received correspondence from Mr Allan, the Complainant in this matter. Mr Allan has expressed his concern at the time this matter is taking to proceed to a final hearing. He has indicated that the delay is causing him further distress and he wishes the matter concluded as soon as possible. Mr Allan has been advised of the circumstances and that we have been awaiting the completion of the Forms before proceeding further.

At the Pre-Hearing review on Friday of last week, I advised the Chair of the current situation and of your email below. 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”.

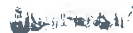
The Chair of the Standards Committee noted the situation.

In the light of the circumstances detailed above I advised that 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. 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 to formally depart from the arrangements 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: Liam Bones <liambones@icloud.com>
Sent: Thursday, August 24, 2023 1:26 PM
To: Stephen Ballantyne <Stephen.Ballantyne@northtyneside.gov.uk>; John Barton <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 

Please let me know if you have any questions.

Liam

Private and Confidential

C A Jones & Associates Ltd

North Tyneside Council

Complaints against Councillor Liam Bones

May 2023

Investigation Report on behalf of North Tyneside Council.

1. Introduction

1.1. I was appointed by Jacqueline Laughton, in her capacity as Monitoring Officer for North Tyneside Council, to investigate a complaint made against Councillor Liam Bones. The complaint is referenced as NT09. 2022-23 by North Tyneside Council.

The complaint was submitted by Mr Jim Allan, who is a former Councillor of North Tyneside Council.

All individuals contacted as part of the investigation fully cooperated and their assistance is greatly appreciated.

1.2. The complaint is as follows:

Mr Allan complained to the Monitoring Officer regarding the conduct of Councillor Bones. I am advised that the Monitoring Officer consulted with the Independent Person prior to writing to Councillor Bones on 6th October 2022 in order to inform the latter that the matter was being passed for an investigation with regard to a potential breach of the Code of Conduct.

The letter confirmed to Councillor Bones that the allegations against him are as follows:

- 1.2.1. Councillor Bones was responsible for the publication of an inaccurate article about Mr Allan on Facebook and a website said to be operated by Councillor Bones.
- 1.2.2. Councillor Bones showed Mr Allan a lack of respect by suggesting that he was not doing his job as a Councillor, which Mr Allan says was a lie because despite being ill and unable to attend Council, he undertook case work and attended meetings online.
- 1.2.3. The article written about Mr Allan ignored his personal circumstances or was written in ignorance of them and was an attempt to “degrade” his character and record as a Ward Councillor.
- 1.2.4. Councillor Bones had access to information about why the by-election was being called, which was not public knowledge, and therefore had disclosed information obtained in his capacity as Councillor.
- 1.2.5. Councillor Bones has brought the Authority into disrepute by publishing an article that was deceitful and dishonest because Mr Allan was undertaking work as a Councillor and to suggest otherwise is wrong.

- 1.2.6. It was dishonest to suggest that Mr Allan was paid £150,000 in allowances without attending meetings. In his time on the Council, he attended thousands of meetings.
- 1.2.7. Councillor Bones used a photograph of Mr Allan in the published article that was the property of the Authority and therefore used an Authority resource for political purposes.
- 1.2.8. Mr Allan had to report the matter to the police, who increased patrols in the area of his home in case anyone reacted to the article.
- 1.2.9. Mr Allan is now receiving treatment for anxiety and stress as a result of the article.
- 1.3. The letter from the Monitoring Officer, dated 6th October 2022, continues by outlining the sections of North Tyneside's Code of Conduct that have been potentially breached, as follows:
- 1.3.1. Part 1 – General Conduct, Paragraph 1
- You must treat others with respect, including Authority officers and other elected members.
- 1.3.2. Part 1- General Conduct, Paragraph 4
- You must not disclose information given to you in confidence by anyone and/or
- You must not use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer, or your business interests.
- 1.3.3. Part 1 – General Conduct, Paragraph
- You must not do anything to bring your role or the authority into disrepute.
- 1.3.4. Part 1- General Conduct, Paragraph 7 – Use of the Authority's Resources and Facilities.
- You must, when using the Authority's resources or authorising their use by others act in accordance with the Authorities requirements and ensure that such resources are not used for political purposes unless that could reasonably be regarded as likely to facilitate or be conducive to the discharge of the functions of the Authority or the office to which you have been appointed or elected.

2. Summary of findings

In order to summarise my findings, I have used the areas of the constitution which were identified at section 1.3 of this report and within the letter issued to Councillor Bones by the Monitoring Officer on 6th October 2022.

I have concluded as follows:

2.1. In relation to the potential breaches listed at 1.3.1 to 1.3.4 of this report:

2.1.1. I have found that **Councillor Liam Bones has breached the Code** in relation to:

Part 1 – General Conduct, Paragraph 1

You must treat others with respect, including Authority officers and other elected members.

2.1.2. I have found that **Councillor Liam Bones has not breached the Code** in relation to:

Part 1- General Conduct, Paragraph 4

You must not disclose information given to you in confidence by anyone and/or

You must not use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer, or your business interests.

2.1.3. I have found that **Councillor Liam Bones has breached the Code** in relation to:

Part 1 – General Conduct, Paragraph

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

2.1.4. I have found that **Councillor Liam Bones has not breached the Code** in relation to:

Part 1- General Conduct, Paragraph 7 – Use of the Authority's Resources and Facilities.

You must, when using the Authority's resources or authorising their use by others act in accordance with the Authorities requirements and ensure that such resources are not used for political purposes unless that could reasonably be regarded as likely to facilitate or be conducive to the discharge of the functions of the Authority or the office to which you have been appointed or elected.

3. Context and key considerations

- 3.1. Under section 27(2) of the Localism Act 2011 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".

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". The first point to be established therefore is whether Councillor Bones was acting in capacity at the time of the incident.

- 3.2. North Tyneside Council adopted a revised Code of Conduct at its Annual Council meeting on 19th May 2022.
- 3.3. The complaint relates to an article published on the North Tyneside Gazette website, which was published on 9th June 2022.
- 3.4. Councillor Bones stated to me that, had he been acting in the capacity of a councillor (which he does not consider that he was), and had he been aware of the personal circumstances at the time of writing the article, he would have "spun the article in a different way". He went on to state that had he been in the Council Chamber, that he would have toned his comments down.
- 3.5. In order to consider if Councillor Bones was indeed acting in the capacity of a councillor at the time of writing the article, I have considered **Livingstone v Adjudication Panel for England [2006]**, where Mr Justice Collins considered the question of when is a councillor acting in their official capacity.

In paragraph 27, Mr Justice Collins stated:

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.

He continued in paragraph 29:

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.

3.6. Livingstone v Adjudication Panel for England [2006] was later considered in detail in another relevant case which was an appeal to the Tribunal. In this appeal, **Bartlett v Milton Keynes Council [2008]**, the tribunal's view was that the Livingstone judgement established that for a councillor to be acting in an official capacity:

3.6.1. The councillor should be engaged in business directly related to the Council or constituents

3.6.2. The link between the councillor's office and the conduct should have a degree of formality.

The article of 9th June 2022 regarding Mr Allan was clearly relating to Council business as indeed is the majority of the subject matter of the North Tyneside Gazette. When asked to comment on the general content of the North Tyneside Gazette, Councillor Bones emailed as followed:

"Regarding examples of non council related articles as I mentioned there were only a few actually published on the site and having gone through them one of them was regarding a local housing development but it focused on the planning element so arguably would relate to the authority "

Although I have not seen all of the articles of the North Tyneside Gazette, the above comment by Councillor Liam Bones, does, to me, strongly suggest that the publication is largely relating to council related business. The article in question dated 9th June, is, in my opinion, wholly relating to council business.

Taking the definition at 3.6.1, I do consider that the article written by Councillor Liam Bones did engage him in business directly related to the council and the constituents.

I therefore conclude that the Code was engaged.

To conclude otherwise, could suggest that anything written by Councillor Liam Bones relating to council business, not specifically stating that he was a councillor would be outside of the scope of the code. This was clearly not the Government's intention when drafting the Localism Act nor would it be conducive to good governance to allow councillors to make any comments about councils or fellow councillors or officers, however disrespectful or misleading they were simply through the device of not identifying themselves explicitly as a councillor.

4. Approach taken to the investigation

4.1. An initial conversation took place with Jaqueline Laughton in her capacity as Monitoring Officer of North Tyneside Council.

4.2. The submitted complaint was reviewed.

4.3. The initial assessment decision notice issued by the Monitoring Officer was reviewed.

4.4. The following individuals were interviewed:

Mr Jim Allan
Louise Caisley (Hospital Care)
Councillor Liam Bones

These interviews were conducted via Zoom calls.

4.5. Brief overview notes of the interviews detailed at 4.4 were shared with the individuals concerned to allow them the opportunity to review the content.

- 4.6. The complaint pack including the article published on 9th June 2022 was reviewed.
- 4.7. The Code of Conduct was considered in conjunction with the comments made within the complaint.
- 4.8. Emailed information from Councillor Liam Bones was considered.

5. Comments on the report

- 5.1. The draft report has been peer reviewed by Hoey Ainscough Associates Ltd who are nationally recognised experts in Code of Conduct related matters to ensure consistency of standard and interpretation with other such reports nationally.
- 5.2. The draft report has also been shared with the Monitoring Officer to ensure that it was of the required standard.
- 5.3. Both the Complainant and the Subject Member were given the opportunity to review the draft report and commented as follows:
 - 5.3.1. After requesting an extension to the time given to respond, Councillor Bones responded as follows:

I wholly dispute the findings of the report however I have no confidence in the impartiality of the standards committee, which is made up mainly of Labour councillors, so assume I will be found guilty regardless. I note that in previous complaints made against me, even though the independent person has sided with me they were overruled by my political opponents.

However, I would like to take the opportunity to respond to several points raised by the report which I am very concerned by.

Firstly, in regard to the finding that I have breached the Code in relation to Part 1 - General Conduct, Paragraph 1.

Paragraph 6.1.13 of the report states:

"I find it inconceivable that Cllr Bones had not known between May and the article being written that Mr Allan had been disqualified nor been so incurious as not to ask why he had been disqualified"

I did know that Mr Allan had been disqualified from his role as a councillor. I knew this only because my role within the Conservative Party means that I routinely check Council attendance records. I did not know of Mr Allan's disqualification through my role as a Councillor because Council had not been informed.

Other local authorities routinely pass motions which temporarily exempt the six month rule from applying to Councillors due to special circumstances. This can be either when the council are notified in advance, as in this motion by Southwark Council which disapplies the rule to enable a council to take maternity leave:

<https://moderngov.southwark.gov.uk/mgAi.aspx?ID=62566>

Or it can be done when a health issue, raised in advance, combined with an end to virtual council meetings are anticipated to prevent a Councillor from attending council physically, as in this draft report on the matter from Wirral Council:

<https://democracy.wirral.gov.uk/documents/s50080545/SIX%20MONTH%20ATTENDANCE%20RULE%20S85%201%20OF%20THE%20LOCAL%20GOVERNMENT%20ACT%201972.pdf>

And in fact a motion can pre-emptively be passed in situations where a hitherto undisclosed medical condition has prevented a councillor from attending Council meetings, requesting that Council extend the six-month rule in the event that the Councillor in question provide some information around their absence, as can be seen in this motion from Burnley Council:

<https://burnley.moderngov.co.uk/documents/s4455/Attendance%206%20months%20reason%20for%20extension%20DR%20ED%20120917.pdf>

As to the point about me being 'incurious' as to why he had been disqualified. It is not my role as a Councillor to ask why another Councillor has not attended meetings. This could be done either by the Monitoring Officer of the Council, who could then prepare motions as above, or for the Labour Party's Whips, as Whips have a pastoral role over their councillors. It would not be expected for an opposition councillor to make those enquiries.

Furthermore, Mr Allan's reason for not attending Council meetings was due to a medical condition. It would have been extremely inappropriate for me to attempt to press Mr Allan into disclosing his medical condition, nor would I expect him to given that medical records are extremely sensitive and confidential data. In fact, I am confident that had I done so this committee would find that to be an even more substantial breach of the Code of Conduct.

I was not aware of Mr Allan's medical condition until the Labour Party issued a counter-briefing over the story a short while after I published it. There is no way I could have been aware of it because of the confidential nature of medical records. I could only have been aware of it had it been brought to the Council's attention through a motion as above - which it never was.

Mr Allan was of course entitled to claim his allowances while he was ill. I again reiterate that I did not know he was ill. The only information I had

was that Mr Allan was continuing to claim allowances and that he had not attended council meetings. Attending council meetings is virtually the only requirement of councillors. They are not bound to reply to constituents emails or attend other meetings. The only statutory requirement of a councillor is to attend council meetings at least once every six months and Mr Allan had not done so. Because I was not aware of his illness and because he had failed to complete the one and only 'job requirement' of a councillor, referring to him as "lazy" was not false, and it did not ignore the true reason (as I did not know it and could not have reasonably been expected to find out about). As I said in my interview with C A Jones & Associates Ltd, had I been aware of his illness the story would have been drafted entirely differently.

In fact, had I been made aware of Mr Allan's illness through a proper channel, such as through the motions referred to as above, I would have voted to exempt the six month rule from him. Everyone goes through periods of ill health and it's of course appropriate that exemptions should have been made.

I also want to touch on an additional comment made in 6.1.14: that

"Mr Allan was fully entitled to claim his allowances during his period of illness. This is akin to sick pay being paid by his employer, the council, and to imply that councillors should not be drawing down allowances when they are seriously ill is to my mind a complete lack of empathy or regard to people's employment rights"

Which is used to justify that

"I therefore conclude that the comments relating to attendance and member allowance without any wider context but putting his absence down to 'laziness' did breach the code of conduct."

It is unclear what the employment status of Councillors is in relation to the Council but it is absolutely clear that Councillors are not and never have been employees of the Council. In fact, being an employee of the Council would disqualify someone from being a Councillor. There could not therefore have been "a lack of empathy or regard to employment rights", firstly because I did not know that Mr Allan was ill and secondly because he is not employed by the council.

Additionally, whether or not a councillor should or should not claim their allowances during a time at which they are unable to fulfill one of their only core functions is entirely a political question. It is far outside of the scope of this report to comment on a political question.

I would also like to comment on 6.2.2.

I heavily dispute the fact that any member of the public could think that a Councillor could claim £150,000 of allowances without attending any meetings of the Council. The entire point of the article was to draw to

attention the fact that Councillor must attend Council meetings at least every six months or become disqualified. Mr Allan became disqualified because of that reason - which is the point of the article. Anyone who read the article would know that a councillor must attend a council meeting at least once every six months or become disqualified - and therefore no longer be eligible for the allowance.

There is a further point to make which is that because other councils can and do frequently exempt Councillors from the six month rule, including in situations where a previously undisclosed medical condition has prevented attendance, and because North Tyneside Council did not follow this procedure for Mr Allan, it is actually the case that "fellow councillors and officers of the Council would tolerate this being the case and that this could also apply to other councillors".

There has ultimately been a failure of care for Mr Allan. Labour Party Whips should have made contact with Mr Allan as he approached the six month non-attendance limit to ascertain why he had not attended so arrangements could be made to exempt him from it. Or the Monitoring Officer or other senior Council Officer could have pre-emptively contacted him to arrange for a motion to be laid before Council to exempt him from it.

But the failure of both the Labour Party and Council Officers to fill any pastoral role they have left Mr Allan open to a political attack from his opponents. It is only natural that that did happen because there is no duty of care between opposing political parties and no expectation that they would be allowed to access Mr Allan's medical records to ascertain if there was a medical reason for him not attending.

I would suggest that going forward Party Whips or some other suitable person within a Party Political Group on the Council are more attentive to their Councillors, including by asking if there is a reason for non-attendance, and that the Monitoring Officer also routinely monitors attendance and takes steps to advise Councillors or Group Leaders if steps need to be taken to disapply the six month rule.

I am sorry for the experience Mr Allan has had. I again repeat that had I known about his medical condition the story would either have not appeared at all or be written in a fundamentally different matter.

I urge the Council to ensure this experience is not repeated by offering Group Whips and the Monitoring Officer/other senior Council Officer training in pastoral support.

5.3.1.1. Mr Allan responded as follows:

(6.1.5.) Councillor Liam Bones stated that with this regard "- I believe Mr Allan was subject to wider limits of acceptable criticism, while he was not an elected representative at the time of publication the article specifically

referred to his time as a local politician immediately prior to the story being published. Additionally, Mr Allan was still appearing on Labour Party leaflets at the time of the article being published, I can provide these if necessary, further demonstrating that he was subject to wider limits of acceptable criticism.

It would be interesting to see where I was appearing on Labour Party leaflets at the time of Mr Bones publication? Did he supply the information to substantiate his comments?

(6.1.13.) I have not been able to establish that Councillor Liam Bones was aware of how poorly Mr Allan was at the time that the article was written. However the illness was in fact the reason why Mr Allan had not attended meetings in recent months and was subsequently disqualified from his position of Councillor. He was disqualified in May and a by-election Private and Confidential Page 12 of 15 called in which the Conservatives put forward Haylee Josendale as a candidate. The by-election was held in July 2022, but nominations closed on 17 June 2022, just 1 week after the article was written. I find it inconceivable that Cllr Bones had not known between May and the article being written that Mr Allan had been disqualified nor been so incurious as not to ask why he had been disqualified, given that his article was presumably in some way informed by the fact that the by election was being held.

The fact that the BY Election was called for by two conservative councillors meant that they knew beforehand, and the disqualification status was part of that knowledge. The impact on my health as a consequence of the publication by Mr Bones is a point I would have thought worthy of comment.

(6.2.4.2.) When interviewed, Councillor Bones stated that there was not a huge amount of pictures on the internet of Mr Allan. He did however state that he had obtained the picture from the Chronicle and that it was also being used on the Labour Party Facebook page.

The issues about the use of council resources, especially photographs, has precedent and in the past the Official Stance of the Authority is that their resources should not be used without permission. I have tried to source the photograph from the internet without success only the one on the council website. The fact that my council lanyard/Identification shows on the photograph means it was taken on behalf of North Tyneside Council. He suggests that it was being used on the labour Party Facebook Page and he received it from the Chronicle, so it was alright for him to use does not make it right. The fact the Council deemed it their property it should be a resource and Mr Bones should know his responsibility as a councillor, and he cannot dismiss that fact by blaming others.

My final comments are about learning from this complaint and the risks it presents for the future, especially the impact on those who are suffering from a mental illness. The comments from my named nurse would have given evidence about the impact on my mental health as a direct consequence of the Mr Bones's publication. Judging from his comments in your report he portrays a position that I was fair game and he could do what he liked, without any regard to a person's wellbeing.

6. Details of specific aspects of the complaint and conclusions

Each aspect of the complaint and the potential breaches of the Code of Conduct have been taken in turn below:

6.1. Part 1 – General Conduct, Paragraph 1

You must treat others with respect, including Authority officers and other elected members.

- 6.1.1. The complaint highlights specific comments made within the article. Councillor Bones did not dispute that he was the author of the article in question.

In particular, there was a section which stated:

“ During his time as a Councillor, Mr Allan received over £150,000 in allowances – but didn't think it necessary to attend the meetings he was being paid to go to”

When this was discussed with Councillor Liam Bones, he stated that this could be read as there being a full stop in the sentence and that it should be read in 2 sections. Councillor Liam Bones stated that he did not think that this was misleading.

My own reading of this section of the article is that it very clearly suggests that Mr Allan had claimed £150,000 without attending any meetings.

Mr Allan had been a long-serving member of the authority and had attended numerous meetings in the past. However, it is clear that with specific knowledge of recent circumstances, that due to health reasons, Councillor Allan had not attended formal meetings of the council in the months leading up to June 2022 and as no mitigating action had been taken either by Mr Allan or the Council, he had therefore been automatically disqualified as an elected member in line with the legal requirements in the Local Government Act 1972. This was following six months of absenteeism.

Looking through North Tyneside's website it is clear that Councillor Allan

had indeed attended many Council meetings prior to becoming poorly. By way of example, the minutes of Full Council meetings on 26th November 2020, 21st January 2021, 18th February 2021, and 18th March 2021, all show Councillor Allan's attendance. These are just a small example of the many meetings that Councillor Allan attended during his time as a councillor.

6.1.2. In concluding if there was a breach with this regard, I have looked at the LGA guidance in relation to respect published to accompany their 2021 model Code of Conduct which states:

“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...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...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.”

6.1.3. Councillor Liam Bones, asked to draw my attention to **Heesom v Public Ombudsman of Wales** which is often used to help assess if there is enhanced Freedom of Expression afforded to politicians pursuant to Article 10 of the European Convention of Human Rights.

6.1.4. Councillor Liam Bones quotes from the case “(iii) Politicians were subject to wider limits of acceptable criticism. They were expected to be more thick-skinned and tolerant to comment than ordinary citizens.”

6.1.5. Councillor Liam Bones stated that with this regard “- I believe Mr Allan was subject to wider limits of acceptable criticism, while he was not an elected representative at the time of publication the article specifically referred to his time as a local politician immediately prior to the story being

published. Additionally, Mr Allan was still appearing on Labour Party leaflets at the time of the article being published, I can provide these if necessary, further demonstrating that he was subject to wider limits of acceptable criticism.”

- 6.1.6. Councillor Liam Bones continued by quoting: “vi) Comments in the political context were tolerated even if untrue, so long as they had some factual basis. What amounted to a value judgment as opposed to fact would be generously construed in favour of the former.”
- 6.1.7. He continued by stating that with this regard “Point vi of the above extract is also relevant, if statements within the article are viewed by yourself to have been untrue, I believe it was demonstrated in my interview that it all had a factual basis which sits clearly within the limits of what is acceptable”.
- 6.1.8. The question here that I have had to consider is, does the statement contained within the article “During his time as a Councillor, Mr Allan received over £150,000 in allowances – but didn’t think it necessary to attend the meetings he was being paid to go to”, fall under the description at 6.1.6 in that it had ‘some factual basis’.
- 6.1.9. The facts are, that during the time that Mr Allan was a Councillor, he did attend many meetings. In addition to this, the £150,000 is an estimate of how much Councillor Allan had received during his time as a Councillor and not merely for the period of 6 months absenteeism.
- 6.1.10. It is my view that Councillor Bones did know that the statement referring to attendance and allowances was not an accurate reflection of the truth. Councillor Bones receives Member allowances himself and therefore knew and understood the amount that a Councillor was entitled to. Councillor Bones also informed me that as part of his role for the Conservative Party that he regularly checked attendance of other Councillors by referring to the Council’s website and would have known that during his period in office that Councillor Allan had indeed attended many meetings in that capacity.
- 6.1.11. I have also considered here the statement made within the article “Laziest Labour Councillor”.
- 6.1.12. Article 10 of the European Convention on Human Rights protects an individual’s right, among other things, to make incorrect but honestly made statements. It protects not only the substance of what is said, but also the form in which it is conveyed. In a political context, the Heesom judgment stated that ‘the immoderate, offensive, exaggerated, and aggressive’ may be tolerated where it would not otherwise be. While Article 10 protects the right to make incorrect but honestly made statements; it does not, however, protect statements which the publisher knows to be false.

6.1.13. I have not been able to establish that Councillor Liam Bones was aware of how poorly Mr Allan was at the time that the article was written. However the illness was in fact the reason why Mr Allan had not attended meetings in recent months and was subsequently disqualified from his position of Councillor. He was disqualified in May and a by-election called in which the Conservatives put forward Haylee Josendale as a candidate. The by-election was held in July 2022, but nominations closed on 17 June 2022, just 1 week after the article was written. I find it inconceivable that Cllr Bones had not known between May and the article being written that Mr Allan had been disqualified nor been so incurious as not to ask why he had been disqualified, given that his article was presumably in some way informed by the fact that the by election was being held.

6.1.14. The ruling in **Heesom v Public Ombudsman of Wales** is relevant here and is key when assessing such matters. The ruling confirmed that the right of freedom of expression is a crucially important right in a democratic society. To refer to a Councillor as the “Laziest Labour Councillor”, whilst it can be seen as offensive, could, in my mind, be viewed as falling under the wider protection and freedom of speech offered under article 10 if there were some justification for it.

However, taking account of the comments made at 6.1.9 ,6.1.10 and 6.1.13 it is my view that Councillor Bones knew that the statement implying that Mr Allan had been taking his allowances and not attending because he was ‘lazy’ was false and ignored the true reason and that they were certainly of a personal nature aimed directly at Mr Allan. Mr Allan was fully entitled to claim his allowances during his period of illness. This is akin to sick pay being paid by his employer, the council, and to imply that councillors should not be drawing down allowances when they are seriously ill is to my mind a complete lack of empathy or regard to people’s employment rights. I therefore do not consider that that this falls the definitions set out by the Heesom case and do not consider that enhanced political protection applies in this instance but was simply a false statement designed to seek political advantage in the forthcoming by election. I therefore conclude that the comments relating to attendance and member allowance without any wider context but putting his absence down to ‘laziness’ **did breach the code of conduct.**

6.2. Part 1- General Conduct, Paragraph 4

You must not disclose information given to you in confidence by anyone and/or

You must not use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer, or your business interests.

6.2.1. Mr Allan claims that the information used by Councillor Bones was confidential and that it must have been obtained through his role as a Councillor. I have looked at each of the individual parts of the information to assess if Mr Allan is correct in this matter or if the information could have been obtained through access to publicly available information.

6.2.1.1. When questioned how he was aware that there was a vacancy (which had arisen through the disqualification of Councillor Allan), Councillor Bones stated that he regularly checked the Council's website and member attendance levels. It was during one such check that Councillor Bones had noticed that Councillor Allan had not attended for the previous six months and that he in fact went on to notify the Council officials of this fact.

6.2.1.2. Member attendance is indeed recorded on the Council's website as described by Councillor Bones and is indeed available for the public to view at any point.

6.2.1.3. With regards to the fact that Councillor Allan had been disqualified for non-attendance, Mr Allan considers that this must have been information received by Councillor Bones in confidence. However, given that the attendance of Members is publicly accessible and that the disqualification rules are in statute and not confidential, it seems reasonable to me to accept that this was not confidential information. The notice of election was issued by the Council on 27th May 2022, so a fortnight before the article was written, and it would seem likely to me that all councillors would have been aware of the reason why the by election was being called.

6.2.1.4. Mr Allan also considered that the amount of £150,000 quoted within the article must have been obtained with some assistance. However, again the information of Members allowances is published on the Council's website and again is easily accessible for members of the public or could be obtained by use of a Freedom of Information request. I therefore do not consider that this was confidential information.

6.2.1.5. Given that the information used within the article is available publicly, I have concluded that there **has not been a breach of the code of conduct** with this regard.

6.2.2. Part 1 – General Conduct, Paragraph

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

6.2.3. In considering if there was a breach with this regard, I have looked at the LGA guidance in relation to disrepute published to accompany their 2021 model Code of Conduct which states:

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.

6.2.3.1. It is my view that the article could easily give the impression that councillors could claim £150,000 of allowances without attending any meetings of the Council and that furthermore, the inference could be that fellow councillors and officers of the Council would tolerate this being the case and that this could also apply to other councillors.

6.2.3.2. Writing such an article and publishing it, potentially leaving the public with the impression that this could and had happened at North Tyneside, could bring the role of Councillor and indeed the authority into disrepute. I therefore conclude that the comments **did breach the code of conduct.**

6.2.4. Part 1- General Conduct, Paragraph 7 – Use of the Authority's Resources and Facilities.

6.2.4.1. This part of the complaint relates to the photograph of Councillor Allan that was used in the article and whether this was a Council owned photograph that should not have been used by Councillor Bones.

6.2.4.2. When interviewed, Councillor Bones stated that there was not a huge amount of pictures on the internet of Mr Allan. He did however state that he had obtained the picture from the Chronicle and that it was also being used on the Labour Party Facebook page.

6.2.4.3. Although, it may well be the case that it was not appropriate to use this photograph without permission, there is no evidence to support that it was taken directly from Council resources. I have therefore concluded that there this was **not a breach of the code of conduct**.

6.2.5. Recommendation.

6.2.5.1. Given that the report concludes that there have been breaches of the Code of Conduct, I would recommend that should the Monitoring Officer agree with the report, that the complaint be referred to the Standard Committee for further consideration.

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