NORTH TYNESIDE COUNCIL STANDARDS SUB-COMMITTEE

PRE-HEARING PROCESS SUMMARY

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

<u>1. Respect</u>

As a member:

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

<u>5. Disrepute</u>

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' 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