

NORTH TYNESIDE COUNCIL STANDARDS SUB-COMMITTEE

HEARING DECISION – FULL DECISION NOTICE

Name of Authority:	North Tyneside Council
Member subject of allegation:	Councillor Liam Bones (not in attendance)
Complainant:	Mr James Allan
Case Reference Number(s):	NT09.2022-23
Committee Members:	Councillor Frank Lott (Chair); Councillor Lewis Bartoli; Councillor Eddie Darke
Investigating Officer:	Mr Colin Jones, C A Jones & Associates Ltd.
Monitoring Officer:	Mr Stephen Ballantyne
Deputy Monitoring Officer:	Mr John Barton
Democratic Services Officer:	Ms Joanne Holmes
Independent Person:	Mr Dan Entwisle
Date and Time of Hearing:	28 September 2023 at 10.00a.m.

Summary of Allegation

The complainant, Mr James Allan, a former Labour Councillor of the Authority, alleges that:

1. The Subject Member, Councillor Liam Bones, published an article about him that appeared on a Facebook page and website called "North Tyneside Gazette" operated by Councillor Bones which contained "varying inaccuracies".
2. In publishing the article, Councillor Bones had failed to treat him with respect by suggesting that he had failed to undertake any work when he was a North Tyneside Councillor and that he was paid £150,000 in allowances despite his failure to attend any meetings.

3. The contents of the article are an “outright lie” because he continued to undertake “casework” and attend online meetings despite his illness in the 6 months before he lost his seat on the Council and had attended “thousands” of meetings during his time as a Councillor.
4. The article was written in an attempt to degrade his character and his record as a Camperdown Councillor. It was deceitful and dishonest and as a result brought the Authority into disrepute.
5. The article was either written in ignorance of his illness or with a disregard for it.
6. The article was written in the knowledge that the by-election had been called as a result of his non-attendance at an Authority meeting for over 6 months. That knowledge could only have been known by Councillor Bones as a result of confidential information given to him by officers which he then used in the article.
7. The use of his photograph taken when he was a Councillor in the article was the use of an Authority resource for political purposes.

Relevant Paragraph(s) of the Code of Conduct for Elected Members

The relevant paragraphs of the Code are:

a) Part 1 Paragraph 1 of the Code – Treating others with Respect

As a Member:

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

b) Part 1 Paragraph 4 of the Code – Confidentiality and access to exempt information

As a Member:

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.....

c) Part 1 Paragraph 5 of the Code – Disrepute

As a Member:

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

d) Part 1 Paragraph 7 – Use of the Authority's resources and facilities

As a Member:

You must not misuse the Authority's resources.

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.

Preliminary Issues

Non-Attendance

Councillor Bones did not attend the hearing.

Councillor Bones was given notice of the date and time of the hearing when the agenda and hearing papers were delivered to him. He was fully aware of his right to attend the hearing and make representations.

On the morning of the hearing, Councillor Bones chose to submit a statement and requested that it be read out during the hearing in his absence.

As the Sub-Committee could be satisfied that Councillor Bones was aware of the date and time of the hearing and had made a conscious decision not to attend, it considered it appropriate to proceed with the hearing in his absence. He had been afforded the right to attend the hearing and address the Sub-Committee.

Procedural Point

Councillor Bones wrote to the Monitoring Officer on 24 August 2023 and referred to Appendix 4 of the 'Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members'.

The section 'Procedure for Standards Hearings' states therein, amongst other things, that on receipt of Forms A to E from a Subject Member, 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 final Investigation Report was received on 23 May 2023, and the hearing before the Standards Sub-Committee would be held beyond that three-month period referred to in the Arrangements document Councillor Bones was of the view that *"the hearing cannot now take place as it would be specifically against the local arrangements agreed by Full Council"*.

The point raised by Councillor Bones was fully considered by the Monitoring Officer who provided legal advice on the procedural point raised by Councillor Bones to the Chair of the Standards Committee during the Pre-Hearing Assessment meeting with the Chair of Standards on 25 August 2023.

The Monitoring Officer responded to the procedural point raised by Councillor Bones in an email dated 31 August 2023 and set out the legal advice that he gave to the Chair of the Standards of Committee during the pre-hearing process meeting. That advice was included in the hearing papers and was read out during the hearing by the Monitoring Officer.

The Monitoring Officer in his advice recited that Councillor Bones despite repeated requests to do so and the requirement on him to comply with the Code of Conduct process, had failed to return the completed Forms A to E which would have provided his response to the Investigation Report and the findings contained therein. The Monitoring Officer also referred specifically to paragraph 15 of the Arrangements document and the paragraph 'Revision of these arrangements' which states: -

"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."

The advice of the Monitoring Officer to the Chair of the Standards Committee was that in the circumstances, it would be improper for the complaint against Councillor Bones to not proceed to a hearing. However,

ultimately, it would be a decision for the Sub-Committee to take as a preliminary matter, after receiving advice from him, on whether or not it should proceed to hear the complaint.

After hearing from the Monitoring Officer, the Sub-Committee determined that it should hear the complaint notwithstanding the three-month period set out in the Arrangements had been exceeded. The failure by Councillor Bones to co-operate with the pre-hearing process by failing to return Forms A to E, despite repeated requests for him to do so, meant that the Monitoring Officer was unable to discuss the responses with the Chair of the Standards Committee in accordance with the process set out in the 'Procedure for Standards Hearings'. That resulted in the delay complained of by Councillor Bones. Had Councillor Bones indicated that he had no intention in returning the Forms then a hearing before Sub-Committee could have been arranged sooner. In fact, on the 5 July 2023 Councillor Bones said that he would return the completed Forms A to E as soon as possible. He failed to do so.

The Sub-Committee was also conscious of the overriding need for it to secure the *"effective and fair consideration of the complaint"*. That meant that on the one hand it was appropriate to be seen to be giving Councillor Bones as much opportunity as possible to be able to engage in the process and to be able to properly set out his position, whilst on the other ensuring that the complainant, Mr Allan, had his complaint dealt with as quickly and as fairly as possible. In other words, to ensure that the rules of natural justice are applied.

In the circumstances, the Sub-Committee considered that it was appropriate on this occasion for it to depart from the 'Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members' and to hear and deal with the complaint submitted against Councillor Bones.

Exclusion of the press and public

Consideration was given as to whether a resolution to exclude the press and the public from the hearing was required.

Neither Councillor Bones nor the Independent Investigator, Mr Jones, requested that the hearing, or parts of the hearing be dealt with in private. Mr Allan had indicated that he wished the hearing to be dealt with in an open session.

The 'Procedure for Standards Hearings' states that that Standards hearings of this nature should be open to the public unless there is confidential or exempt information under Schedule 12A of the Local Government Act 1972. There is clearly 'exempt' information in that the hearing papers contain information relating to individuals. In that regard, after considering paragraph 10 of Schedule 12A of the Local Government Act 1972, the Sub-Committee concluded that the public interest would be better served by the hearing being dealt with in open rather than in private session.

There was therefore no resolution passed by the Sub-Committee excluding the press and public from the hearing.

Local Resolution

The Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members is clear that if there is evidence of a failure to comply with the Code of Conduct, there may still be an opportunity for a local resolution and avoid the need for a hearing. However, any local resolution is conditional on a complainant being satisfied with the outcome achieved by a local resolution.

On the final Investigation Report and its findings being sent to Mr Allan and Councillor Bones by the Monitoring Officer, he asked if they would consider a disposal of the complaint by way of local resolution.

Mr Allan indicated that he was not agreeable to the matter being dealt with by way of local resolution. Councillor Bones did not respond to the request to consider a local resolution as a means of resolving matters.

The matter has therefore proceeded to a hearing.

The Chair stated that he was tasked with the responsibility of ensuring that there was a fair and efficient hearing and delay in reaching a decision on the complaint was minimised. The Chair emphasised that the Investigation Report and its findings were focussed on Councillor Bones's actions in publishing an article that appeared on a website operated by him known as "North Tyneside Gazette". The article was published on 9 June 2022 around the time that a by-election was called in Mr Allan's seat (he was a former Councillor) in the Camperdown Ward. Mr Allan was referred to in the article as the "*Laziest Labour Councillor*" and to having allegedly receiving over £150,000 in allowances during his time as Councillor when it

was reported that he *“didn’t think it necessary to attend the meetings he was being paid to go to”*.

Mr Allan complained that the article was deceitful and dishonest and brought the Authority, or Councillor Bones’s office, into disrepute. Mr Allan said in his complaint that despite his illness he had been undertaking countless *“bits of casework”* and claimed that during his period in office he had attended *“thousands”* of meetings as a Councillor. Mr Allan claims that in publishing the article Councillor Bones had failed to treat him with respect and had been an attempt to degrade his reputation as a former Councillor.

Mr Allan also complained that Councillor Bones had used confidential information only known to him as a Councillor to publish the article and that Councillor Bones had also used a photograph of Mr Allan in the article which was the property of the Authority and was therefore an improper use of its resources.

Findings of Fact

References in brackets below to paragraph numbers refer to paragraphs in the investigator’s report considered by the Sub-Committee.

The Sub-Committee, following careful consideration of the papers and the submissions made today by Mr Jones and Mr Entwisle, and the statement submitted by Councillor Bones before the hearing finds the following:

Application of the Code

Councillor Bones does not dispute that he was the author of the article that appeared in the ‘North Tyneside Gazette’ (*“the article”*) about Mr Allan on 9 June 2022. (Para 6.1.1).

The Sub-Committee was satisfied that the Code of Conduct for Members was engaged when Councillor Bones published the article in question because the article related wholly to *“Council business”*. He was therefore engaged in business directly related to the Authority and/or its constituents so was acting in his capacity as an elected Member. (Paras 3.6.1 and 3.6.2).

Publication of the Story in ‘North Tyneside Gazette’

1. The article published by Councillor Bones on 9 June 2022 included the following passages –

- *“Voters to go to polls after ‘Laziest Labour Councillor’ kicked out”.*
 - *“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”.*
 - *Labour Councillor Kicked Out.*
 - *“How many elections do we need to have before we get a Councillor who does the job?”*
2. It is not disputed that Councillor Bones was responsible for the publication of the article (paragraph 6.1.1).
 3. Councillor Bones suggested that in accordance with the Heesom v Public Ombudsman of Wales, Mr Allan was subject to wider limits of acceptable criticism than other Members of the public because the article related to a period of time when Mr Allan was a Councillor. (Para 6.1.5).
 4. Councillor Bones also claimed that the statements that he made in the article were made in a political context and therefore, even if untrue, could be “tolerated” because they had some factual basis. Councillor Bones is of the view that the statements contained in the article “all had a factual basis”. (Para 6.1.6.).
 5. When considering whether the statements appearing in the article had a “factual basis”, including the statement that –

“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.”
 6. it is the case that Mr Allan during “his time as a Councillor” had in fact attended very many meetings of the Authority. That is verified by the Minutes of a sample of the meetings attended by Mr Allan over the years referred to in the Investigation Report. (Para 6.1.1).

7. The £150,000 estimate of allowances received by Mr Allan referred to in the article could only ever be based on Mr Allan's entire period as a Councillor over many years and not merely for the period of 6 months absenteeism. (Para 6.1.9).
8. The statement appearing in the article relating to Mr Allan's attendance and allowances as set out in paragraph 5 above was not an accurate reflection of the truth. (Para 6.1.10).
9. As part of his role in the Conservative Group, Councillor Bones regularly checked the attendance of Councillors at Authority meetings, including the attendances of Mr Allan. It is in that context, and being aware that Mr Allan had attended very many meetings over the years, that Councillor Bones chose to refer to Mr Allan in the article as the "*Laziest Labour Councillor*". (Paras 6.1.10 and 6.1.11).
10. The right of freedom of expression afforded to Councillor Bones as an elected Member is a qualified right. Therefore, the statements made in the article needed to be justified by him. The claims in the article that Mr Allan had obtained £150,000 in allowances without "*thinking it necessary to attend the meetings he was being paid to go to*" and referring to him as "*lazy*" for not attending any meetings, could not be justified and Councillor Bones knew them to be false. (Para 6.1.14).
11. The information contained in the article regarding Mr Allan's non-attendance at Authority meetings for over 6 months was true. Information in relation to the attendance of Members at meetings is publicly accessible, and the disqualification rules are a matter of law (Para 6.2.1.3).
12. The photograph of Mr Allan included in the article was one which the Authority was likely to hold the copyright of and as such could be seen as its resource. However, the photograph also appears in other publicly available sources, such as the press, and was obtained through one of those sources. (Para 6.2.4.2)

Findings as to whether there has been a failure to follow the Code of Conduct

The Sub-Committee, having read the papers, including the statement from Councillor Bones, and having heard from the Independent Investigating Officer, carefully considered whether one or more breaches of the Code of Conduct had occurred. In reaching its decision the Sub-Committee took account of the views of the Independent Person who was in attendance at the hearing and the Sub-Committee's deliberations throughout.

No Breach

The Committee found that Councillor Bones **had not** breached the following paragraphs of the Code of Conduct for Elected Members:

Part 1 Paragraph 4 of the Code – Confidentiality and access to exempt information

As a Member:

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.....

or;

Part 1 Paragraph 7 of the Code – Use of Authority's Resources and Facilities –

As a Member;

You must not misuse the Authority's resources.....

Breaches

The Sub-Committee found that Councillor Bones **had breached** the following paragraphs of the Code of Conduct for Elected Members:

Part 1 Paragraph 1 of the Code – Respect

As a Member:

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

Part 1 Paragraph 5 of the Code – Disrepute

As a Member:

You must do anything to bring your role or the Authority into disrepute.

The Sub-Committee considered that the actions of Councillor Bones in publishing the article in the 'North Tyneside Gazette' on 9 June 2022 showed a lack of respect towards Mr Allan. Irrespective of whether Councillor Bones knew about Mr Allan's illness or not, there was no excuse for him to have made the comments he did about Mr Allan, including the statement about Mr Allan's attendance at meetings and the allowances he is said to have received, which were, in the words of the Independent Investigator *"not an accurate reflection of the truth"*.

Sanctions

The Sub-Committee considered the sanctions available to it and heard from the Investigating Officer, the Independent Person and read what Councillor Bones had to say in the statement submitted on the morning of the hearing.

The Sub-Committee had accepted and agreed with the views of Mr Jones, the Independent Investigator and Mr Entwisle, the Independent Person that there had been a breach of the Code of Conduct.

The Sub-Committee had regard to the statement submitted by Councillor Bones. In that statement he said: -

"Because of the lack of such an 'exemption motion', I incorrectly assumed Mr Allan's absence was due to laziness not illness. This was wrong, and I am sorry."

He then went on to say: -

"I would once again like to extend an apology to Mr Allan for my poor language and its subsequent effect. In the time since my comments, I have both reflected on my actions and spoken with the Monitoring Officer, as well as received training on the code of conduct. Since then, no further complaints against me have proceeded."

The Sub-Committee, and the Independent Person welcomed Councillor Bones's willingness to apologise to Mr Allan and that he had made an

incorrect assumption when publishing the article in the 'North Shields Gazette' and that he has reflected on his actions and has accepted that what he said was wrong.

Both the Mr Jones and Mr Entwisle when asked to comment on any possible sanctions both suggested that given the public nature of the comments made about Mr Allan by Councillor Bones, that any apology given by Councillor Bones to Mr Allan would have to be a "*public*" apology.

The Sub-Committee determined that: -

1. A letter of apology be issued by Councillor Bones to Mr Allan.

The letter of apology be supplied to the Chair of the Standards Committee and Monitoring Officer, and agreed with the Chair of the Standards Committee and the Monitoring Officer, as soon as possible before it is sent to Mr Allan.
2. A letter of censure be issued to Councillor Bones by the Sub-Committee; and
3. The decision of the Sub-Committee be reported to a meeting of the full Council for information.

In reaching its decision the Sub-Committee took account of the views of the Independent Person and the Independent Investigator.