
North Tyneside Council

**Investigation of alleged breach of the Council's Code of Conduct by
Cllr John O'Shea**

Investigation Report

Denis Cooper

7th November 2015

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1. Introduction

1.1 This report has been prepared in accordance with the Council's agreed procedures for the processing of an allegation that a member of the Council has breached the Council's agreed Code of Conduct for members.

1.2 The allegation against Cllr O'Shea was referred to me for independent investigation by the Council's Monitoring Officer on 22 July 2015. She took the view that if the allegations were proved they may establish a breach of the Code of Conduct.

2. Details of the allegation

2.1 The allegation is set out in full in the annex to the complaint form at **Appendix 1**.

2.2 It concerns the alleged conduct of the subject member, Councillor John O'Shea. It is in two parts.

2.3 Firstly, it is alleged that in a political newsletter published in March 2015 entitled Whitley Bay News, edited by Cllr O'Shea and promoted by Councillor B Burdis, Cllr O'Shea failed to treat the complainant and other members of the Conservative Group with respect and may (sic) have brought the authority and the office of elected member into disrepute.

2.4 Secondly, it is alleged that in the same political leaflet, Councillor O'Shea failed to treat the Conservative Party Parliamentary candidate with respect. He allegedly did so by making inaccurate statements about his record, namely by saying , that he called a referendum in his own ward-presumably at further cost to the taxpayer.

3. Evidence of the complainant Councillor Judith Wallace

3.1 Cllr Wallace stated that the headline in the newsletter which stated that "The Tories plan 14% Council Tax Rise" was untrue and that no such plan ever existed.

- 3.2 Cllr Wallace explained that under the North Tyneside Council procedure rules it was open to the opposition, in response to the administration's proposed budget, to submit by way of Notice of Objection either a critique or an alternative budget. For 2015 the Conservative Group had put forward a critique rather than an alternative budget. The Labour Party had adopted a similar stand in the past.
- 3.3 In the Notice of Objection they had raised a number of issues about potential savings of expenditure connected with an asset review. The possibility of the outsourcing of services was another option.
- 3.4 At no point had they suggested any council tax increase or a particular percentage council tax increase. To the contrary, they had welcomed the acceptance of the council tax freeze grant which they had done in the past. They believed there was no justification for a council tax rise and had not proposed it.
- 3.5 She could not understand how the administration had concluded from the proceedings at council or from the Notice submitted that a council tax increase was proposed and she felt that it was a wholly misconceived and erroneous conclusion. She believed that Councillor O'Shea knew the Conservative Group's position.
- 3.6 She did not recall any contribution from the deputy leader or comment along the lines stated by the subject member that it had been stated at Council, without demur from the Conservatives, that their proposals inevitably led to a 14% increase in council tax.
- 3.7 She did make the point that if the statement had been made at the meeting it might have been at the time when it was no longer possible for any right of reply to be given. There was no suggestion on her part that there should be a council tax increase and it was thus an erroneous conclusion from the debate which Councillor O'Shea, as an experienced member and a member of the Finance Sub-Committee, should well know.
- 3.8 Turning to the question of the statement in regard to the Parliamentary candidate she knew that as a matter of record he had not used tax payers' money to fund his referendum either in Tunbridge Wells or locally. He had not engaged any publicity or documentation as part of his campaign which could have led to that conclusion.

- 3.9 She therefore had concluded that the Labour Party had failed to make proper enquiries and thus had reached an erroneous conclusion about what had happened. Cllr O'Shea made no effort to ascertain who met the costs and the presumption was a slur on the candidate. She told me that Glenn Hall, the Parliamentary candidate had agreed to speak with me about the matter and to explain the factual position.
- 3.10 She described herself as horrified that such statements could be made in this publication and they were clearly designed in her view to discourage people from voting Conservative.
- 3.11 Similar erroneous statements (about both the 14% council tax rise and the cost of Mr Hall's referendum) were made in Preston Ward Labour leaflets. The Labour Party candidate in Preston Ward was not a sitting councillor (unlike Cllr O'Shea) and thus was not subject to the Standards Committee or Code of Conduct for Members.

4. Evidence of other witnesses

Councillor Brian Burdis

- 4.1 Councillor Burdis is a ward councillor for the Whitley Bay area and a publisher of the Whitley Bay News and he was also agent for John O'Shea and several other members of the Council in relation to the local elections in May 2015.
- 4.2 He is responsible for publishing and distributing the Whitley Bay News.
- 4.3 He advised me that a number of the Labour Party news publications at that time would have included the same articles referring to the Budget and to the parliamentary candidate. He had no involvement in the preparation of the content.
- 4.4 His understanding of the content in relation to the Budget was that the discussion at Council had focused upon the fact that the Conservatives proposed no cuts in services.
- 4.5 The Deputy Leader had indicated at the meeting that if there were to be no cuts in services then a 14% council tax increase would be required.
- 4.6 No member of the Conservative group at the Council meeting had spoken against that proposition. On that basis he believed this was an accurate statement of the position of the Conservative group.

4.7 He regarded the publication of this newsletter as part of the normal cut and thrust of local politics and suggested that in past times similar publications from the Conservative group had been issued which were also regarded as part of the normality of local politics.

Janice Gillespie, Head of Financial Services

4.8 Janice explained that within the Council's budget process the political opposition were entitled to submit either an alternative budget or a critique of the budget proposed by the administration.

4.9 For the 2015/16 Budget the Conservative Opposition had elected to submit a critique of the proposed budget. They were entitled to and received, officer help in preparing their submission.

4.10 The paper which the Conservatives had put forward was prepared with help and guidance from officers. It made no reference to the need for a council tax increase to meet its aims and in fact welcomed the council tax freeze provisions.

4.11 She could not categorically remember the debate at the Council meeting or any particular reference to the inevitability of a 14% council tax increase.

Dave Brown Democratic Services Manager

4.12 He said he had no record of any comment concerning a 14% increase in Council Tax and was a little puzzled by it because the Conservative objection did not actually propose anything other than to ask the Cabinet to review all assets to ensure better provision, and to have a better, more beneficial sense of priorities when using public money. The objection was essentially a critique of the Cabinet's proposals.

4.13 The figure "14" was referred to in a different context, by Councillor Pickard when he was addressing the Conservative objection and asked how the Conservative Group would fund a £14 million gap if they did not reduce services. He could not recall a suggestion being made to increase Council tax by 14% to cover this. In fact the Conservative Group's objection welcomes the continued use of Council tax Freeze Grant.

Glenn Hall former parliamentary candidate

4.14 Glenn confirmed that no one had contacted him to verify the accuracy or otherwise of the statements made about him in the Whitley Bay News.

4.15 In regard to the statement about the local referendum contained in the publication, he stated that there had been no cost to the taxpayer.

5. Evidence of the subject member- Councillor John O'Shea

5.1 Councillor O'Shea's initial response to the allegation is at **Appendix 2**

5.2 Councillor O'Shea was re-elected to the Council in May 2015.

5.3 The Whitley Bay News was circulated in ten wards by the Tyneside Constituency Labour party. Each of the ten publications is edited by the local ward member and contains a number of identical items.

5.4 The publication was issued before the Notice of Election so that its cost would not constitute election expenses.

5.5 He did not see the content of the leaflet until it arrived to be delivered. It was put together by other members of the CLP.

5.6 He was identified as the editor as he was the only candidate standing in the ward, which elects by thirds.

5.7 Although he is classed as the editor he had no editorial control over the content. He did not think the content was harmful and was happy for it to be delivered by himself and his team.

5.8 As far as the content itself is concerned he was perfectly satisfied that it was in order. It arose from a debate at the council meeting and the point was made at the council meeting by a member of his party that the Conservative proposal in relation to the budget would make it necessary to have a 14% increase in council tax.

5.9 To his best recollection it was the Deputy Mayor who raised this point. He is not sure at what point in the meeting the comment was actually made and whether or not it was procedurally possible for the Conservatives to make a reply.

- 5.10 In relation to the statement about the Parliamentary candidate, he believed that a member of his party had carried out research into his background. Once again he was not privy to the detail.
- 5.11 The word "presumably" was used because they did not have specific factual knowledge. He agreed that perhaps more research could have taken place to check this but he was assured that it had been verified.
- 5.12 As far as he was concerned, the content of the Whitley Bay News in relation to both matters was one which was part of the normal political cut and thrust of election preparation. He said that it was often the case that things were said in these publications which were not necessary 100% accurate or had not been checked and if that was necessary then the whole political process would grind to a halt.

6. **Relevant documents**

- 6.1 Appendix 1-The Complaint including
- 6.1.1 Whitley Bay News (PP 8-9)
- 6.1.2 Notice of Objection at Council 19th February 2015 (PP 10-13)
- 6.2 Appendix 2 Initial response of the subject member

7. **Findings of fact**

- 7.1 The Opposition budget submission made no reference to a 14% increase in Council Tax.
- 7.2 No statement was made in the Council meeting that the Tories proposed a 14% increase in Council tax.
- 7.3 The referendum undertaken by the parliamentary candidate was not funded by Council tax payers.
- 7.4 Cllr O'Shea is the editor of Whitley Bay News and was responsible for organising its distribution in his ward.
- 7.5 Although he did not write the content of the newsletter, he did not challenge any of its content.

7.6 Cllr O'Shea did not take any steps to verify the accuracy of the content of the newsletter in relation to the council tax increase nor the costs of the referendum undertaken by the parliamentary candidate.

7.7 Cllr O'Shea possessed no evidence that public funds had been spent by the Parliamentary candidate in undertaking the referendum.

7.8 It is reasonable to conclude that he was aware of the position of the Conservative Group on the Council Tax increase.

8. **Evaluation of the evidence and conclusions as to whether the councillor has or has not failed to comply with the Code of Conduct**

8.1 In evaluating the evidence, there are a number of factors which I must consider.

8.2 The first is that of **capacity**. Section 26 of the Localism Act 2011 requires the authority to 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. Compliance with the Code is required whenever a member:

8.2.1 conducts the business of the authority including the business of any office to which the member is appointed; or

8.2.2 acts, claims to act or gives the impression that the member is acting as a representative of the authority.

8.3 I am satisfied that the allegations relate to Cllr O'Shea's conduct as a councillor as he is clearly presented as such in the newsletter.

8.4 Whitley Bay News is a publication designed to provide information to electors about the actions of elected members on their behalf. Cllr O'Shea is described as the editor and as Councillor John O'Shea and the newsletter is described as an "Update from your local Labour Team".

8.5 The second issue is that of **the relevant Code**. The Council has adopted a code of conduct under section 26 of the Localism Act.

8.6 The relevant parts of the Code itself are:

8.6.1 *"You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council into disrepute." Paragraph 4*

8.6.2 *"You must treat others with respect, including Council officers and other elected members." Paragraph 1*

8.7 In order to find a breach of the Code of Conduct, I must be satisfied that Cllr O'Shea's conduct breaches these requirements.

8.8 I have carefully considered all the evidence presented to me and will now apply my findings of fact and evaluation to the relevant parts of the Code.

8.9 It is clear that Cllr O'Shea was active in the distribution of material which was factually incorrect. In relation to the comments about the budget, Cllr O'Shea had sufficient information in his possession to know that it was incorrect. He was present at the Council meeting when the budget was discussed and had access to the Conservative Group paper on the matter. As far as the allegation about the parliamentary candidate is concerned, it was incumbent on him to check the facts before allowing material to be published and distributed given the serious nature of the allegation.

8.10 I do not accept his argument that he had no editorial control. If that were the case he should not have allowed himself to be named as editor. Nor do I accept his assertion that he was perfectly satisfied with the content given his knowledge of the true situation. I accept that a degree of robustness is implicit in the political process but do not think this embraces untruths.

8.11 The publication which was edited by him in his capacity as a member of the Council clearly is intended to denigrate the actions of others including fellow councillors and a private individual.

8.12 The use of the word "presumably" to describe the actions of the parliamentary candidate does not constitute a defence. If anything, it underlines the carelessness of the compilers of the newsletter in not testing the facts before publication. That carelessness is underlined by his observation that often facts are not checked before publication. Where statements are to be made which impact adversely on others, then it is important to be sure of the facts.

8.13 I do not think these actions are sufficiently serious to constitute a breach of paragraph 4 of the Code (disrepute) but I do consider that paragraph 1 of the Code has been broken by virtue of the lack of respect shown to fellow councillors and the parliamentary candidate.

9. **Response to the draft report**

9.1 The complainant made no comment on the report.

9.2 Cllr O'Shea made a factual observation about the extent of the distribution of the newsletter and the identity of its editors which I have taken account of.

9.3 He also said that he believed the comments to be truthful.

9.4 Nothing in the response to the draft report causes me to alter my conclusion.

10. **Conclusions**

10.1 I find that Cllr O'Shea has breached the Code of Conduct by failing to treat the complainant, other members of the Conservative Group and the parliamentary candidate with respect. He did not bring the Council into disrepute.

10.2 My investigation is now concluded and my report will now be considered by the Monitoring Officer and by the Standards Committee.

10.3 I would like to thank all who spoke to me about the matter and his colleagues for their help and courtesy.

Denis Cooper

Consultant

Eversheds LLP

7th November 2015