

Standards Sub-Committee - Hearing

1 March 2016

Present: Councillor C Johnson (Chair)
Councillors P Earley, S Graham, M Huscroft and P Mason

Also Present: Mr D Cooper, Eversheds LLP, Investigating Officer
Mr D Brown, witness to the Investigating Officer
Councillor J O'Shea, Subject Member of the complaint
Mr G Clark, Independent Person
Mrs S Gardner, Independent Person

SSC05/03/16 Apologies

Apologies for absence were received from Councillor N Huscroft.

SSC06/03/16 Appointment of Substitute Members

Pursuant to the Council's Constitution, the appointment of the following substitute member was reported:

Councillor M Huscroft for Councillor N Huscroft.

SSC07/03/16 Declarations of Interest and Dispensations

There were no declarations of interest reported.

There were no dispensations in relation to registerable personal interests reported.

SSC08/03/16 Chair's Announcement

The Chair's opening remarks included the introductions of all parties present and the preliminary procedural matters.

SSC09/03/16 Exclusion Resolution

The Standards Sub-Committee was required to consider any representations from the Investigating Officer and/or the Member as to why the Sub-Committee should exclude the press and public under the following terms:

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

Standards Sub-Committee

No representations were received.

Resolved that the Hearing proceed in public and the agenda papers be made available.

Preliminary Issues

Prior to the commencement of the Hearing, Councillor O'Shea who was present as the subject member of the complaint raised the following two matters. He requested that a record of these matters be included in the Decision Notice.

1. Councillor O'Shea was strongly opposed to the presence of a Conservative Group member on the Sub-Committee that was to consider the Code of Conduct complaint against him. The Investigating Officer's report before the Sub-Committee found that Councillor O'Shea had been disrespectful to the complainant, Conservative Group and the Conservative Parliamentary Candidate. Councillor O'Shea considered that any member of the Conservative Group participating in the Sub-Committee would be biased as they were an "injured party" in relation to the findings of the Investigating Officer's report. In response, the Conservative Group member present at the meeting explained that he had no prior knowledge of the complaint before he had received the committee papers and he was of the view that he was able to participate properly in the consideration of the complaint.
2. Councillor O'Shea referred to an article that had appeared in a Conservative Party publication which made reference to the complaint against him being submitted to the "Standards Board". Councillor O'Shea was concerned that as the complaint was only known to himself, the Officers of the Authority, and the Complainant that confidentiality had been breached by the article appearing in the Conservative Party publication. He was also concerned that such a publication may have meant that the Members of the Sub-Committee had prior knowledge of the complaint against him and may have formed already a view in relation to the complaint. The Sub-Committee noted Councillor O'Shea's comments and agreed that his concerns be recorded in the Formal Written Decision Notice.

SSC10/03/2016 Code of Conduct for Members – Complaint NT05/2015

The Standards Sub-Committee received a report which presented the Investigating Officer's completed investigation report in relation to an alleged breach of the Members' Code of Conduct in relation to Complaint NT05/2015.

The Authority's Local Arrangements for the consideration of complaints made against Members under the Code of Conduct for Members and Co-opted Members at Appendix A to the report, required that a completed investigation report be received by the Standards Sub-Committee to determine the action to be taken with respect to the Complaint.

The person(s) making the complaint would be referred to in this procedure as 'the Complainant' and the person against whom the complaint was made would be referred to as 'the Subject Member'.

The Pre-Hearing Process Summary Report in relation to complaint NT05/2015 was attached at Appendix B to the report.

In determining the procedural arrangements at the hearing, the pre-hearing process considered:

1. Summary of Allegation

The Complainant, Councillor Mrs J Wallace, alleged that Councillor J O'Shea:

- a. in a political newsletter published in March 2015 entitled "Whitley Bay News", edited by Councillor O'Shea and promoted by Councillor B Burdis, Councillor O'Shea failed to treat the complainant and other members of the Conservative Group with respect and brought the authority and the office of elected members into disrepute; and
- b. in the same political leaflet, Councillor O'Shea failed to treat the Conservative Party Parliamentary candidate with respect. He allegedly did so by inaccurate statements about his record, namely by saying, that he called a referendum in his own ward-presumably at further cost to the taxpayer.

2. Relevant Paragraph(s) of the Code of Conduct

The relevant paragraphs of the Code in relation to the above complaints were:

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

Paragraph 4: 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.

In order to find a breach of the Code of Conduct, the Sub-Committee had to be satisfied that Cllr O'Shea's conduct breached these requirements.

3. Findings of Fact in the Investigating Officer's report that were disagreed

Councillor O'Shea had indicated that he did not disagree with any of the findings of fact.

4. Attendance at the hearing (including representatives)

Councillor O'Shea had confirmed he would be in attendance at the hearing.

The Investigating Officer had confirmed he would be in attendance at the hearing and would present his report.

Standards Sub-Committee

Witnesses Attending:

Councillor O'Shea has not requested the attendance of any witnesses.

The Investigating Officer has requested the attendance of the following witness:

Mr D Brown.

The report of the Investigating Officer in relation to Complaint NT05/2015 was attached at Appendix C.

The Sub-Committee examined the Investigating Officer's report together with the representations received from Councillor O'Shea.

The Sub-Committee asked questions of the Investigating Officer in relation to his report.

[The Chair announced a short adjournment at this point]

In its deliberations in private, the Sub-Committee considered the findings of the Investigating Officer in his report together with his verbal comments at the meeting.

The Sub-Committee also took into account of the views expressed by the Independent Persons at the meeting.

5. Findings of Fact

The Sub-Committee made the following Findings of Fact:

- a. Councillor O'Shea was a Member of North Tyneside Council representing the Whitley Bay Ward. His current term of office ends in May 2019. He had been a member of North Tyneside Council since May 2011.
- b. A political Newsletter was published in March 2015 entitled "Whitley Bay News – Update from your local Labour Team, Spring 2015". The Newsletter was published by "Brian Burdis on behalf of John O'Shea". John O'Shea was identified on the front face of the Newsletter as its editor. On the next and final page of the Newsletter a picture of and headline referring to "Councillor John O'Shea" discussing the regeneration of Whitley Bay was reproduced.
- c. The Newsletter stated in its main headline that "The Tories plan 14% Council Tax Rise". This headline and the narrative underneath gave rise to the first allegation.
- d. In the same Newsletter, on the second page, an article made reference to the "Tory parliamentary candidate". Mr G Hall was that Parliamentary Candidate. Within that article the following statement was made: "When the Tunbridge Wells Regeneration Company was set up in 2008 at a cost of £330,000 to the taxpayer he became the Chair. He proposed the demolition of the Town Hall but a leaflet produced to inform residents was described as "an outrageous

piece of opinion manipulation” by a communication expert. When he called a referendum in his own ward – presumably at further cost of the taxpayer – he lost the vote and resigned as Chair.” This article in the Newsletter gave rise to the second allegation.

- e. Councillor O’Shea was a Member of the Council at the time of the publication of the Newsletter.
- f. Councillor O’Shea was, in accordance with Section 26 of the Localism Act 2011, conducting the business of his office as a Councillor when the Newsletter was published.
- g. The Sub-Committee noted from the Investigating Officer’s report that with regard to the article about the local referendum contained in the Newsletter, Mr Hall had stated that there had been no cost to the taxpayer.
- h. The Newsletter was circulated in ten wards by the Tyneside Constituency Labour party. Each of the ten publications was “edited” by the local ward member and contained a number of identical items. The Newsletter was issued before the Notice of Election for the Local and Parliamentary elections for 2015 and was published so that its cost would not constitute election expenses. Councillor O’Shea had not seen the content of the Newsletter until it arrived to be delivered. It was put together by other members of the Constituency Labour Party. Councillor O’Shea was identified as the editor as he was the only candidate standing in the ward, which elected by thirds, to promote his role.
- i. The Sub-Committee noted that no other Code of Conduct complaints had been received in relation to the distribution of similar Newsletters in the remaining other nine wards.
- j. Although Councillor O’Shea had explained that he had actually had no editorial control over the content of the Newsletter, as he was identified as the editor, the Sub-Committee was satisfied that he was responsible for its contents.
- k. In relation to the first allegation, identified above, the content of the Newsletter arose from a debate at a Full Council meeting dealing with the Authority’s budget. In that meeting a point had been made by a member of Councillor O’Shea’s Group that the Conservative Group’s proposal in relation to the budget would make it necessary to have a 14% increase in Council Tax. This was disputed by the Complainant. Under the Authority’s 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 Complainant was considered that Councillor O’Shea could not have properly concluded from the proceedings at the Full Council meeting or from the Notice of Objection submitted by the Conservative Group that a Council Tax increase was proposed.

Standards Sub-Committee

- l. The Sub-Committee noted that this complaint had been submitted on behalf of the Conservative Group by the Complainant as the Leader of that Group, in addition to herself. The Sub-Committee found that as all members of the Conservative Group had not been aware of the complaint's submission the Group as a whole could not be considered to be complainants. The Sub-Committee therefore found that the first allegation was submitted on behalf of the Complainant only.
- m. In relation to the second allegation, identified above, concerning the statement about the Parliamentary Candidate, Councillor O'Shea believed that a member of his party had carried out research into the Parliamentary Candidate's background. The word "presumably" was used in the Newsletter because there was no specific factual knowledge of how the referendum referred to in the article had been funded. The Sub-Committee noted that this complaint had not been made by the Parliamentary Candidate himself but on his behalf by the Complainant.
- n. The Sub-Committee noted that a leaflet published in 2013 by the Conservative Party as a part of the Mayoral elections [circulated at the hearing by Councillor O'Shea and agreed by the Chair of the Sub-Committee to be accepted as part of Councillor O'Shea's evidence] had made reference to the setting of the Council Tax and had a headline "Labour Councillor proposes 28% Council Tax rise". The Sub-Committee considered that this leaflet, like the Newsletter that was the subject of the complaint against Councillor O'Shea, was similar to leaflets previously published by all of the political groups. These leaflets were not always accurate and reflected the political environment in North Tyneside.
- o. The Sub-Committee noted in relation to politician on politician complaints that a higher threshold had to be reached before statements and comments could constitute a breach of the Code of Conduct for Members.
- p. The Sub-Committee found that North Tyneside Council had robust political debate both inside and outside of Council Meetings.

6. Findings as to whether there had been a failure to follow the Code of Conduct

In reaching its decision, the Sub-Committee considered all the relevant circumstances, together with the verbal comments made by the Investigating Officer and the Subject Member at the meeting. The Sub-Committee also took account of the views of the Independent Persons.

Resolved that (1) in relation to the first allegation made against Councillor O'Shea concerning the article in the Newsletter headed "The Tories plan 14% Council Tax Rise", the Sub-Committee:

- a) adopted the findings and conclusions of the Investigating Officer, set out in the report, that Councillor O'Shea had not brought the Council into disrepute; and

b) found that Councillor O'Shea had also not failed to treat the Complainant, Councillor Wallace, with respect. The Sub-Committee considered that the article fell within the bounds of political "cut and thrust" and was below the higher threshold of conduct necessary for a breach of the Code of Conduct for Members in relation to complaints submitted by a politician against another politician.

(2) in relation to the second allegation the Sub-Committee found that Councillor O'Shea had not failed to treat the Parliamentary Candidate, Mr G Hall, with respect; and considered that whilst the statement regarding funding of the referendum had been incorrect, the use of "presumably" to qualify the statement meant that a reader of the statement in the Newsletter would not consider it to be a definitive statement of the true situation. In addition, the sub-committee noted that the complaint in relation to this matter had not been submitted by Mr Hall but on his behalf by the Complainant, Councillor Wallace; it considered that if Mr Hall had been offended by the statement and had felt that Councillor O'Shea had been disrespectful towards him he would have submitted the complaint himself.

This was a majority decision of the Sub-Committee.