

North Tyneside Metropolitan Borough Council

Standards Committee

Allegations arising from Council Consideration of Members' Allowances

Report of Peter Keith-Lucas

1 THE ALLEGATIONS

I was appointed by Vivienne M Geary, the Monitoring Officer of North Tyneside Metropolitan Borough Council ("the Authority") to investigate and report on 6 complaints arising from the Council's consideration at its meeting of 27 November 2014 of the report of the Independent Remuneration Panel's report in respect of Members' Allowances.

These allegations are as follows (the numbers relate to the Authority's indexing system for allegations in respect of member conduct). The allegations were submitted before the local government elections in May 2015. This report refers to allegations made against or by Councillor David Ord. Councillor Ord was not re-elected in the May 2015 elections and is no longer a Member of North Tyneside Council. In this report for ease of reference Councillor Ord is referred to in his former capacity, as Councillor Ord, as at the time of the incident complained of (and the allegations made) he was a Member of the Authority –

1.1 Allegation 1 – Councillor Tommy Mulvenna in respect of Councillor David Ord (NT/10/2014)

Councillor Mulvenna alleged that Councillor David Ord –

- 1.1.1 Failed to show respect to Mr John Anderson, Chair of the Independent Remuneration Panel, and conducted himself in a manner which could reasonably be regarded as bringing the authority and his office into disrepute in that, during questions to the Mr Anderson, Councillor David Ord had been argumentative and less than professional, at one point saying that the Panel's report was "mindless crap";

- 1.1.2 Failed to show respect to Councillor Frank Lott and conducted himself in a manner which could reasonably be regarded as bringing the authority and his office into disrepute in that he "gave the finger" to Councillor Frank Lott.
- 1.1.3 Failed to show respect to the Mayor and to the Chair of Council and conducted himself in a manner which could reasonably be regarded as bringing the authority and his office into disrepute in, having been warned about his behaviour, he disrupted the Mayor's comments in an unacceptable manner.
- 1.1.4 Failed to show respect to the Chair of Council and conducted himself in a manner which could reasonably be regarded as bringing the Authority and his office into disrepute in that, after the Chair had asked him to leave the meeting, he initially failed to do so, and then made a "Fascist salute" to the Chair's dais and left the meeting.

1.2 Allegation 2 – Councillor Gary Bell in respect of Councillor David Ord (NT/11/2014)

Councillor Gary Bell alleged that Councillor David Ord failed to show respect to the Chair and conducted himself in a manner which could reasonably be regarded as bringing the Authority and his office into disrepute in that he "made a Nazi salute" after being asked to leave the Council meeting, which gesture was witnessed by Full Council and the Public Gallery.

Councillor Bell stated in his allegation as follows –

"The conduct by Councillor Ord offended me.

After serving my country in the Armed forces and those veterans who fought against the Nazis, behaviour from an elected member in this way is a disgrace.

In the same building we have a Holocaust memorial and he clicks his heels together and raises his arm in a Nazi salute is beyond contempt.

I hope the strongest sanction will be endorsed, no words of an apology from him or his leader.

A shameful night for us all!"

1.3 Allegation 3 – Councillor Frank Lott in respect of Councillor Ord (NT/17/2014)

Councillor Frank Lott alleged that Councillor David Ord –

- 1.3.1 Failed to show respect to the Chair of the Independent Remuneration Panel and conducted himself in a manner which could reasonably be regarded as bringing the authority and his office, in that he referred to either the report of the Panel or to the Chair's definition of "the mean average" as "mindless"; and

- 1.3.2 Failed to show respect to Councillor Frank Lott and conducted himself in a manner which could reasonably be regarded as bringing the Authority and his office into disrepute, in that, when Councillor Frank Lott told the Chair of Council that he considered Councillor David Ord's conduct to be unacceptable, Councillor Ord "raised his left arm towards me with the middle finger uppermost".

Councillor Frank Lott stated in his complaint that he considered both the statement and the gesture to be unacceptable.

1.4 Allegation 4 – Councillor Brian Burdis in respect of Councillor Ord (NT/20/2014)

Councillor Brian Burdis alleged that Councillor David Ord failed to show respect to the Chair of the Independent Remuneration Panel, to Councillor Frank Lott and to the Chair of Council and conducted himself in a manner which could reasonably be regarded as bringing the authority and his office in to disrepute, in that he –

- 1.4.1 "was obnoxious and insulting to the Independent Chair of the Remuneration Panel";
- 1.4.2 "made a one-fingered gesture to Councillor Frank Lott";
- 1.4.3 Behaved in a "disgusting and depraved" manner in response to the Chair of Council "whereby Councillor Ord stood up in full view of the Chamber and raised his arm in a Nazi salute then left the Chamber."

Councillor Brian Burdis states in his complaint that –

"Councillor Ord's behaviour was an insult to all who died at the hands of the Nazis in World War 2. This outrageous act clearly brought the Council into disrepute.

The later excuse that the salute was a Bellamy salute, a salute to the American flag in pledge of allegiance, however there were no Stars and Stripes within the Chamber, I do not believe Councillor Ord is a USA citizen and this practice stopped after fascist groups such as the Nazis adopted the gesture. I personally believe that when Councillor Ord realised the gravity of his action he has made a futile attempt to cover it up with the lame Bellamy salute story."

1.5 Allegation 5 – Councillor Ord in respect of Councillor Gary Madden (NT/16/2014)

This paragraph has been redacted as it relates to a separate complaint not related to the complaints being dealt with by the Sub-Committee at this meeting.

1.6 Allegation 6 – Councillor Brian Burdis in respect of Councillor Ord (NT/19/2014)

The context for this complaint is that Councillor David Ord made an allegation (NT/15/2014) against Councillor Brian Burdis in the following terms –

"Despite the fact that there was nothing similar to a Nazi salute made in the Chamber, Brian Burdis, in a shameless attempt to deflect attention for the

just passed 25% increase in Councillors' Basic Allowances, invented this and then, for his own benefit, decided to claim that something that hadn't happened was somehow an insult to the millions murdered by the Nazis during the 1940s. Not only did this disgusting little man not bother to give the whole total of the millions murdered he went to the press with it.

This cannot be seen as anything other than calling North Tyneside Council into disrepute and this scum should be expelled from the Council."

This allegation was copied to Councillor Brian Burdis for comment and, having consulted the Independent Persons, the Monitoring Officer exercised delegated powers and determined that this allegation should not be referred for investigation.

Councillor Brian Burdis then made an allegation that Councillor David Ord –

- 1.6.1 failed to treat him with respect in making his complaint in respect of Councillor Brian Burdis.
- 1.6.2 attempted to intimidate or improperly influence, him as a person who is involved in any complaint about any alleged breach of this code of conduct

Specifically, Councillor Brian Burdis stated as follows –

"The complaint is in reference to Cllr Ord's complaint (copy attached).

The language in the complaint is inappropriate and offensive and without justification.

To use the words "disgusting little man" and scum" in his submission I believe is against the Council's Code of Conduct which says that "you must treat others with respect, including Council Officers and Elected Members."

The wording could also be perceived by the public as a form of bullying and intimidation.

Councillor Ord has used language against another member of the Council to the detriment of that member that is clearly a breach of the Code of Conduct."

2 THE CODE OF CONDUCT

The Council has adopted a Code of Conduct in accordance with Section 27(2) of the Localism Act 2011

That Code includes the following provisions –

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

2. You must not bully any person (including specifically any Authority employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Authority, or your office as a member of the Authority, into disrepute.

Section 27(2) provides that the Code of Conduct applies to all elected members of a relevant authority when they are acting in that capacity.

3 MEMBERS' ALLOWANCES

By virtue of Section 100 of the Local Government Act 2000) and the Local Authorities (Members' Allowances) (England) Regulations 2003, as amended, the Authority may pay members' allowances, comprising a Basic Allowance which is payable to every Councillor, and a scale of Special Responsibility Allowances payable to the Mayor and to members who hold positions of special responsibility within the Authority. The Council must approve an annual Scheme of Members' Allowances, but before they do so they must have regard to the recommendations of an Independent Remuneration Panel, appointed by the Council for this purpose. The Council may approve the scheme annually, or may agree to increase allowances automatically every year by reference to an index for a maximum of 4 years, in which case such automatic increases in accordance with that increase do not require a further report from the Independent Remuneration Panel.

4 MY INVESTIGATION

4.1 For the purpose of my investigation, the Monitoring Officer provided me with copies of each of the allegations, including copies of the 6 complaints, and of Councillor David Ord's unsuccessful complaint in respect of Councillor Brian Burdis, and supporting papers (see Appendix 1 for a list of papers which I considered as part of this investigation)

4.2 I decided that, in view of the conflict of evidence, it would be helpful to my investigation to interview all the Councillors who made or were the subject of allegations, together with the Mayor, and also, in view of the suggestion that some of the complaints were a Labour Group conspiracy to discredit Councillor David Ord, also to interview a couple of officers as non-political witnesses of events. I attach at Appendix 2 a list of all those who I interviewed. In each case, with the consent of the interviewee, I tape-recorded each interview and arranged for a transcript of the interview to be provided by the Monitoring Officer to the interviewee, and I invited all interviewees to send to me any further information which they considered to be relevant if anything occurred to them after the interview. I wish to record my gratitude to all those whom I interviewed for their willingness to co-operate with my investigation and for their openness at interview.

4.3 The Council Meeting of 27 November 2014

4.3.1 I inspected the Council Chamber and David Brown, Democratic Services Manager, explained to me the seating arrangements for Council Meetings within the Chamber. He explained that the Chamber is arranged with a raised dais at the front, on which there were seated, facing the Chamber, left to right –

- (a) Stephen Ballantyne, Lawyer Specialist - Governance and Employment
- (b) David Brown, Democratic Services Manager
- (c) Viv Geary, Head of Law and Governance and Monitoring Officer
- (d) Councillor Tommy Mulvenna, Chair of Council
- (e) Councillor Gary Bell, Deputy Chair of Council
- (f) Patrick Melia, Chief Executive
- (g) Mrs Norma Redfearn, Mayor

In front of the dais and in front of the Mayor was a lectern, from which John Anderson, Chair of the Independent Remuneration Panel, presented his report.

The Council Chamber is arranged such that the Labour Party's 42 Councillors sit to the Chair's right; The Liberal Democrat Party's 4 Councillors sit in front of the Chair; and the Conservative Party's 12 Councillors sit to the Chair's left. At the back of the Chamber, between the Liberal Democrat and the Conservative seats were a couple of seats for officers, to which John Anderson, Chair of the Independent Remuneration Panel, retired after he had presented the panel's report.

All parties confirm that at this meeting, Councillor Brian Burdis was sitting towards the far end from the Chair of the third (back) row of Labour seats; Councillor Bruce Pickard was sitting in the middle of the front row of Labour seats as Deputy Mayor; Councillor Frank Lott was sitting in the middle of the front row of the Labour seats, and Councillor David Ord was sitting on the left hand of the Liberal Democrat row of seats, as viewed from the Chair.

Paul Hanson, Deputy Chief Executive, was seated in the back row of the Public Gallery, at the far end to the Dais, and in line with the Liberal Democrat seats.

All Member's seats and the dais are equipped with microphones, so that Members are instructed to press a button on their microphone when speaking, to ensure that they are audible to the Chamber, but the acoustics of the Chamber are such that remarks made without the benefit of an activated microphone can be readily audible to other Members. The proceedings of Council are not recorded.

4.3.2 The Conduct of the Council Meeting – Undisputed Evidence

The undisputed evidence is as follows –

All parties confirm that the Council meeting was conducted in an orderly fashion up until the consideration of the item in respect of Members' Allowances.

The item on Members' Allowances was Item 9 on the agenda for the Council Meeting. The written agenda included a covering report from Vivienne Geary as Head of Law and Governance, to which was attached the report of the Independent Remuneration Panel. The agenda including these reports had been sent to all members of Council at least 5 clear days before the day of the Council Meeting. Councillor David Ord was under no obligation to give advance notice of any concerns, but he had not notified officers in advance of the meeting of any concerns in respect of the report, or notified the Chair that he wished to speak to it.

When Item 9 was reached, Councillor Bruce Pickard introduced the item in his role as deputy Mayor and the responsible Cabinet Member and introduced John Anderson as the Chair of the Independent Remuneration Panel to present the Panel's report. John Anderson spoke for no more than 5 minutes, explaining how the Panel had reached its conclusions that the members' Basic Allowances in North Tyneside were significantly lower than comparable allowances in the other "LA7" authorities (the other 4 Tyneside Metropolitan Borough Councils, plus Durham City Council and Northumberland County Council), and recommending an increase from £7,896 per annum to £9,759 per annum, to be indexed for 4 years by reference to NJC pay awards to local authority employees, and that the panel give further consideration to the appropriate level of Special Responsibility Allowances. By way of background, all parties agree that the Panel had made similar recommendations in previous years, but that Council had rejected these recommendations as inappropriate during a period of economic recession.

The Chair then invited Councillors to put questions to John Anderson. Councillor David Ord asked John Anderson how the Panel had undertaken their comparison with the other LA7 authorities and particularly whether the Panel had factored into their assessment that North Tyneside Council has significantly fewer residents per Councillor than any of the other LA7 authorities. Councillor David Ord put his question forcefully, as a combination of question and argument. John Anderson replied at some length, largely restating the basis of the Panel's recommendation, but tacitly acknowledging that the Panel had not factored the difference of population per Councillor into their assessment. Following John Anderson's response, Councillor David Ord made a remark which was audible to the Chamber. Councillor David Ord stated that he had not been satisfied with John Anderson's response and had intended the remark to be audible to the Chamber

Councillor Frank Lott then activated his microphone and addressed the Chair to say that Councillor David Ord's remark had been unacceptable. Councillor David Ord then made a gesture to Councillor Frank Lott, comprising raising his left hand with the middle finger extended. Councillor David Ord has during the investigation of this matter acknowledged that this was not acceptable behaviour in a Council debate. The Chair then spoke to Councillor David Ord to warn him as to his conduct.

The Chair then invited other Councillors to ask questions of John Anderson, but none wished to. John Anderson then went from the lectern and sat among the Officers' Chairs at the back of the Chamber, between the Conservative and the Liberal Democrat seats.

The Chair then invited Members to debate the recommendations. Councillor David Ord was one of the Members who spoke in this debate, repeating his view robustly that there were many ways to analyse what would be a reasonable level of Basic Allowance, but that just comparing the Basic Allowances paid by the LA7 authorities did not provide any objective justification for a particular figure, and that the report of the Independent Remuneration Panel was flawed by reason of its not taking account of the lower population per Councillor.

At the close of debate, Councillor Bruce Pickard called for a named vote on the recommendations, which was taken as recorded in the minutes, with Councillor David Ord voting against the recommendations.

Following the vote, the Mayor activated her microphone and spoke to ask whether Councillor David Ord could elect not to receive his increased allowances. Councillor David Ord responded, still seated, saying that this was not a realistic option as the full increased allowance would still be liable to tax and assessed for the purposes of benefits. Councillor David Ord's remarks here are variously described as a "rant", and he accepts that he interrupted and spoke across the Mayor and that he was shouting.

The Chair then activated his microphone to speak over Councillor David Ord and said that he had had enough of Councillor David Ord's conduct and asked him to leave the Chamber. Councillor David Ord then left his seat, leaving his coat and papers behind and exited the Chamber. At some point between standing and leaving the Chamber he made a gesture towards the Chair, in which he stood with his legs together and raised his right arm, to or above the horizontal, with his hand flat and facing down. After he left the room, there was a period of silence and then the Chair then adjourned the Council meeting for a brief period before continuing with the meeting.

After the meeting, Councillor David Ord and Councillor Brian Burdis spoke in turn to a reporter from the Evening Chronicle.

4.3.3 The Conduct of the Council Meeting – Disputed Issues

(a) Councillor David Ord's remark to John Anderson

There is a conflict of evidence as to exactly what Councillor David Ord said by way of remark after John Anderson's reply to his question.

Following John Anderson's response to Councillor David Ord's question, Councillor David Ord made a loud remark which was heard by a number of the persons whom I interviewed.

Councillor David Ord acknowledged that he had deliberately made a remark out loud to indicate to John Anderson what he felt about the report, and he initially recalled his words as being "moronic report". Questioned further, he accepted that he may have said "mindless" or "mindless crap".

Dave Brown, Democratic Services Manager, recalled the remark as "mindless".

Councillor Brian Burdis recalled the remark but could not recall the exact words.

Councillor Frank Lott recalled the remark as "That is mindless."

Councillor Tommy Mulrenna, in the Chair, did not recall hearing the remark.

On the balance of evidence I conclude that Councillor David Ord's remark was intended to be heard by John Anderson, was intended by him to refer to the report of the Independent Remuneration Panel rather than to John Anderson, and described the report as "mindless".

(b) Councillor David Ord's manner of address to John Anderson

There is a conflict of evidence as to the nature of Councillor David Ord's manner towards John Anderson.

Whilst there are differing accounts of Councillor David Ord's manner of address in putting his question to John Anderson, I note particularly that Councillor Tommy Mulrenna, in the Chair, referred to there being a fine line between robust challenge and rudeness. He reported to me that he had noted Councillor David Ord's manner and considered that Councillor David Ord was "out of line" and towards the end of his question became "quite rude and challenging", but he also said that quite a few North Tyneside Councillors had "gone over the margin" on occasions. He did not caution Councillor David Ord in respect of his manner in either asking his question to John Anderson or making his contribution to the debate on the item, in the presence of John Anderson.

(c) Councillor David Ord's interruption of the Mayor

The Mayor, Mrs Norma Redfearn, said to me that after the completion of the named vote she turned to the Monitoring Officer and asked whether Councillor David Ord and other members who had voted against the increase in Basic Allowance could elect to forego the increase. Councillor David Ord said that he was angered because he saw the Mayor's intervention as an argumentative political statement rather than a question to an officer, and as a breach of Standing Orders in that the consideration of the agenda item on Members' Allowances had closed with the completion of the named vote. It is fair to say that other witnesses reported the Mayor's intervention as a statement to the Chamber rather than as a question to an officer. I have to conclude that, whatever her intention, the Mayor was out of order in making this intervention as the Council had by then concluded its consideration of this item of business and she knew that Councillor David Ord was already very excited about this matter and she knew or should have known that her intervention would be likely to provoke him further. I accept Councillor David Ord's evidence that he saw her intervention as a direct and improper provocation to him, rather than as being a question to the Monitoring Officer. However, I accept Councillor David Ord's own testimony that his actions in interrupting the Mayor and shouting across her were improper and disorderly, and I am satisfied that the Chair, Councillor Tommy Mulvenna, acted reasonably in requesting him to leave the Chamber.

(d) Councillor David Ord's gesture when asked to leave the Chamber

There is a conflict of evidence as to the nature of Councillor David Ord's gesture, and what he intended by it.

It is agreed that he stood with his legs together and raised his right arm, straight, with the hand flat and facing down. There is some dispute of evidence as to how high he raised his arm, and a direct conflict of evidence as to what the gesture was meant to signify.

When Councillor David Ord spoke to the Evening Chronicle reporter after the end of the Council meeting (he reports that he thought initially that she was the Council's Press Officer) he told her that "it was a Bellamy Salute, not a Nazi salute. A Bellamy salute is the salute made to the American flag." He is also reported as saying that a Nazi salute would involve raising the arm higher. In evidence to me he said that the Bellamy salute involves raising the arm to the horizontal, whereas a Nazi salute involves raising the arm to 45 degrees above the horizontal.

All the other witnesses whom I interviewed reported that they saw the gesture as a Nazi or Fascist salute.

In support of his claim that it was a Bellamy salute, Councillor David Ord said to me as follows –

- (i) He acknowledged that his intention in making the gesture was to cause offence to Councillors;
- (ii) He said that he had acted unscripted, as in previous years the Labour Group had consistently rejected similar recommendations from the Independent Remuneration Panel and he had come to the meeting anticipating that they would do so again, apart from the expenses for the Independent Persons. So he had been thrown by Councillor Bruce Pickard's introduction in which he supported the Panel's recommendation for increasing Basic Allowances. He had been caught unprepared, which may explain why he was agitated;
- (iii) He had been annoyed that the Mayor had chosen to speak after the resolution had been passed, in breach of the rules of debate in the Constitution, to seek to embarrass him by suggesting that he might wish to forego the increase in the Basic Allowance;
- (iv) He said that his intention was to draw an analogy between the Labour Group's support for increased Basic Allowances and the practice of "pork barrel politics" in the USA, whereby Congressmen move amendments to Federal Bills to secure approval for Federal spending within their states or congressional districts;
- (v) He acknowledged that the Bellamy salute had not been in use in the USA since the USA entered the Second World War in 1942, because of its similarity to the Nazi or Fascist salute, and that there was no USA flag in the Council Chamber;
- (vi) Despite extensive questioning, he declined to say why he might have thought that Councillors would recognise a Bellamy salute, draw the suggested analogy with "pork barrel politics", and be offended by such an analogy. He also declined to accept the suggestion that he might have intended the gesture as a Nazi or Fascist salute, to make an analogy between the actions of the Chair in using Council Standing Orders to exclude him from the Council Chamber and the brutal suppression of democratic opposition in pre-war Germany. He also declined to accept that he might reasonably have anticipated that all Councillors would recognise the gesture as a Nazi or Fascist salute, and that such a gesture, suggesting that Councillors were behaving in a manner which was comparable to the Nazis in Germany, would inevitably cause great offence.

Councillor David Ord explained the difference between a Bellamy salute and a Nazi or Fascist salute, in that for a Bellamy salute the right arm is raised to be horizontal, whereas for a Nazi or Fascist salute the arm is raised above the horizontal, strictly to 45 degrees above the horizontal. Clicking of heels is particularly associated with the Nazi or Fascist salute, but not an essential part of the salute.

Councillor David Ord asserted that he raised his arm only to the horizontal. Paul Hanson, the Deputy Chief Executive, sitting side on to him as he made the gesture, gave evidence that he raised his arm significantly above the horizontal, though not to a full 45 degrees.

There is a particular conflict of evidence as to whether Councillor David Ord clicked his heels together as part of the gesture.

- Councillor David Ord denies that he clicked his heels together, saying that he merely made the gesture as he stood up from his chair, as part of which movement his legs may have been straight and together, as if "at attention". He acknowledges that, had he clicked his heels together as part of the gesture, it would have been more akin to a Nazi or Fascist salute.
- Councillor Tommy Mulvenna, from the Chair, stated that he saw Councillor David Ord's heels come together, but he also recalls that Councillor David Ord had walked just beyond the far end of the Liberal Democrat before making the gesture, so that his legs were visible beyond the front boards of the Liberal Democrat desks.
- Councillor Gary Madden says that he saw Councillor David Ord stand up, move a couple of paces away from his chair and saw him bring his legs together into an "at attention" stance, but did not actually see or hear him click his heels. Councillor Madden was at some distance across the Council Chamber when this incident occurred. I conclude that Councillor Gary Madden could not have seen Councillor David Ord's legs behind the front panel of the Liberal Democrat desks, but could see his upper body and the attitude of his legs.
- Other witnesses report that they saw him make the gesture when standing at or at most a couple of paces from his seat, and that whilst they saw that his legs were straight and together – as if "at attention" – they did not see or hear an actual click of his heels.

So the only witness who claims to have seen him do so is Councillor Tommy Mulvenna. From the Chair, he would have had a clear view of Councillor David Ord throughout this passage, but his evidence on this point is less authoritative as he also differs from other witnesses in reporting that Councillor David Ord walked to the far end of the Liberal Democrat desk before making the salute whereas all other witnesses report that he pushed back his chair, stood up, and made the salute from no more than 2 paces from his seated position. I am satisfied that Councillor Tommy Mulvenna is not being dishonest in his evidence to me, and that this is his memory of these events, but I believe that his recollection is inaccurate on this point.

Despite my finding that Councillor David Ord did not click his heels together, I conclude that Councillor David Ord's claim that he intended the gesture as a Bellamy salute is not credible.

I place reliance upon Councillor David Ord's evidence that, in making the salute, he intended to cause offence. He is an intelligent man with considerable practical experience in local politics. If he gave consideration to the probable effect of his gesture before he made it, then he must have realised that very few if any of the Councillors would have heard of a Bellamy salute, have been able to distinguish a Bellamy Salute from a Nazi or Fascist salute, or have understood in the absence of a USA flag that this might have been intended as a Bellamy salute, let alone made the suggested connection between their resolution in respect of increased Basic Allowances and "pork barrel politics" in the USA, let alone been offended by that analogy. On the other hand, he certainly should have realised that most if not all Councillors would recognise his gesture as a Nazi or Fascist salute, have drawn the conclusion that he was suggesting that their conduct was comparable with the behaviour of the Nazis in pre-war and wartime Germany, and quite reasonably been greatly offended by that comparison. I am also of the opinion that, if Councillor David Ord's gesture was deliberate, he was clearly aware of the difference between a Bellamy and a Nazi or Fascist salute, and of the depth of offence which a Nazi or Fascist salute would cause. Further, there is clear testimony that he raised his arm well above the horizontal. So, had his considered intention been to make a Bellamy salute, he would have ensured that he did not raise his arm at all above the horizontal. Accordingly, I conclude that he deliberately made a Nazi or Fascist salute, that he did consider the likely impact of his gesture at the time, that he appreciated that a Nazi or Fascist salute would cause the maximum offence, that he knew that his gesture would be recognised as a Nazi or Fascist salute by most of the Councillors present and subsequently sought to minimise his culpability by claiming to the Evening Chronicle journalist and in subsequent correspondence that it had been a Bellamy salute.

4.4 Wallsend Ward Facebook

THIS PARAGRAPH HAS BEEN REDACTED AS IT RELATES TO A SEPARATE COMPLAINT NOT RELATED TO THE COMPLAINTS BEING DEALT WITH BY THE SUB-COMMITTEE AT THIS MEETING.

4.5 Councillor David Ord's description of Councillor Brian Burdis as "this despicable little man" and as "this scum".

4.5.1 Undisputed Evidence

The facts of this matter are set out in documents and are as follows –

Following Councillor Brian Burdis' complaint in respect of Councillor David Ord, Councillor David Ord made an allegation (NT/15/2014) against Councillor Brian Burdis in the following terms –

"Despite the fact that there was nothing similar to a Nazi salute made in the Chamber, Brian Burdis, in a shameless attempt to deflect attention for the just passed 25% increase in Councillors' Basic Allowances, invented this and then, for his own benefit, decided to claim that something that hadn't happened was somehow an insult to the millions murdered by the Nazis during the 1940s. Not only did this disgusting little man not bother to give the whole total of the millions murdered he went to the press with it.

This cannot be seen as anything other than calling North Tyneside Council into disrepute and this scum should be expelled from the Council."

Councillor David Ord's reference to the number of deaths in the Second World War relates to a passage in the Evening Chronicle report of the debate in Council, in which Councillor Brian Burdis is quoted as saying –

"I am absolutely disgusted, it is not right.

Six million Jews died during the Second World War and soldiers died to fight against these people."

The Monitoring Officer exercised delegated powers and determined that this allegation should not be referred for investigation.

Councillor Brian Burdis then made an allegation that Councillor David Ord –

- (a) failed to treat him with respect in making his complaint in respect of Councillor Brian Burdis.
- (b) attempted to intimidate or improperly influence, him as a person who is involved in any complaint about any alleged breach of this code of conduct

Specifically, Councillor Brian Burdis stated as follows –

"The complaint is in reference to Cllr Ord's complaint (copy attached).

The language in the complaint is inappropriate and offensive and without justification.

To use the words "disgusting little man" and "scum" in his submission I believe is against the Council's Code of Conduct which says that "you must treat others with respect, including Council Officers and Elected Members."

The wording could also be perceived by the public as a form of bullying and intimidation.

Councillor Ord has used language against another member of the Council to the detriment of that member that is clearly a breach of the Code of Conduct."

The Monitoring Officer sent a copy of Councillor Brian Burdis' complaint to Councillor David Ord on 23 January 2015, requesting that he apologise to Councillor Brian Burdis and setting a deadline for such apology. Councillor David Ord did not apologise within that deadline, despite the Monitoring Officer sending him a reminder on 3 March 2015. Accordingly, on 23 March the Monitoring Officer wrote to Councillor David Ord to say that she had now decided, in the absence of an apology, to refer the complaint for investigation.

On 27 March 2015, Councillor David Ord replied to the Monitoring Officer as follows –

"Dear Mrs Geary,

I have grave doubts about the legality and constitutional basis for the Labour Council demanding an apology for having the temerity to complain about the disgusting behaviour of a Labour Councillor.

The simple facts are that Councillor Burdis invented a Nazi salute for his own political purposes, and then went to the press with a blatant self-serving fabrication that managed to exploit and trivialise the mass-murder of people by the Nazis in order to distract attention from the sheer greed of the Labour Party in voting through a rise in Councillors' allowances.

I note that this is considered acceptable by the Labour Council and no action was taken against Councillor Burdis for either his lies about an opposition Councillor, or his depraved exploitation of the mass-murder of millions of people. Obviously despite having a Holocaust Memorial in the Council Offices, this is considered by the Labour Council to have no meaning whatsoever.

However I have attached an apology which seems suitable in the circumstances. Yours faithfully

David Ord"

Councillor David Ord enclosed a blank sheet of paper, in the centre of which in very small print was the one word "Sorry".

In interview, Councillor David Ord confirmed to me that his apology was intended to be mocking.

4.5.2 Disputed Evidence

(a) Should the content of a standards complaint be privileged?

There is nothing in the Local Government Act 2000, the Localism Act 2011 or other local government legislation which gives any special

protection to statements made in a standards complaint, or excludes such statements from the ambit of the Authority's Code of Conduct.

(b) Councillor Brian Burdis' intention in referring to Jewish Deaths

I have found above that Councillor David Ord did make a Nazi salute to the Chair in response to being asked to leave the Chamber. Councillor Brian Burdis stated in evidence that he recognised Councillor David Ord's gesture as being a Nazi salute, and that he saw it as seriously disrespectful to the Chair by drawing an analogy between the conduct of the Chair in asking him to withdraw and the actions of the Nazis. Whilst the Nazis did many appalling things, including the suppression of democratic opposition, the conduct for which they are most infamous, and the only element of their conduct which is the subject of a memorial in the Council Offices, is the genocide against the Jews in the Holocaust. I therefore conclude that it was entirely reasonable for Councillor Brian Burdis to consider that Councillor David Ord's actions trivialised their deaths and to say so to the Evening Chronicle reporter after the meeting. It was also entirely foreseeable to Councillor David Ord that Councillor Brian Burdis might reasonably draw this connection, and so unreasonable for Councillor David Ord to criticise Councillor Brian Burdis for doing so.

(c) The number of Jews killed by the Nazis

Councillor David Ord said to me that he had been particularly offended that Councillor Brian Burdis should have suggested that the number of Jews killed during the Second World War was 6 million, whereas the true figure was 11 million.

I find that the number of Jews who died in the Second World War as a direct result of the actions of the Nazis is a matter of dispute, but the broad consensus is that approximately six million European Jews died during World War II as a direct result of the actions of the Nazis. Martin Gilbert estimates 5.7 million (78%) of the 7.3 million Jews in German occupied Europe were Holocaust victims. The United States Holocaust Memorial Museum estimates Holocaust deaths range between 4.9 to 6.0 million Jews. An early estimate by Gerald Reitlinger in 1953 put the death toll at 4.2 to 4.6 million. However, Nazi persecution was not limited to the Jews, but extended to Roma, Ukrainians, Poles and Russians, handicapped people, homosexuals and religious and political dissidents. The number of people killed who fell within this broader description is variously estimated at between 11 and 17 million.

However, I note that Councillor Brian Burdis is quoted in the Evening Chronicle article as referring specifically to the number of Jews killed during the Second World War, and I conclude that his quoted statement that they numbered 6 million is a credible and responsible estimate. Councillor David Ord's figure in interview of 11 million is

significantly more than is suggested by the principal reputable authorities on this matter.

(d) Councillor David Ord's epithets in respect of Councillor Brian Burdis

In his complaint, Councillor David Ord describes Councillor Brian Burdis as "this disgusting little man" and as "this scum".

In interview, Councillor David Ord declined to accept that such abuse was unacceptable, only being prepared to concede that it "could have been phrased better."

As set out above, I find that Councillor Burdis acted reasonably in making his reported statement to the Evening Chronicle reporter. There is certainly nothing in Councillor Brian Burdis' actions which merits criticism or gets near to a failure to treat Councillor David Ord with respect. I find that the words which Councillor David Ord used to describe Councillor Brian Burdis were unacceptable in the context of political debate in a democratic society.

5 MY FINDINGS

5.1 The Council Meeting of 27 November 2014

5.1.1 Councillor David Ord's manner in questioning John Anderson

The evidence is that Councillor David Ord was robust and challenging in his manner in putting forward his question to John Anderson as to how the Independent Remuneration Panel had come to its recommendations. However, whilst Councillor Tommy Mulvenna as Chair of Council felt that he had been "out of line" and had been "quite rude and challenging", he acknowledged that there is a fine line between robust challenge and rudeness. Councillor Tommy Mulvenna was conscious that John Anderson was not a Councillor, but was an external person who was conscientiously doing a job in the public interest for little reward, and it was against that standard that he took his decision not to intervene. Against that background I find that in his question to John Anderson and in his participation in the debate on the Independent Remuneration Panel's report Councillor David Ord was robust and challenging but I find that, in this respect, **Councillor David Ord did not fail to treat John Anderson with respect.**

5.1.2 Councillor David Ord's remark following John Anderson's response

Whilst there is a conflict of evidence about exactly what Councillor David Ord said following John Anderson's response to his question, on the balance of evidence I conclude that Councillor David Ord's remark was intended to be heard by John Anderson, was intended by him to refer to the report of the Independent Remuneration Panel rather than to John Anderson, and described the report as "mindless".

I understand that Councillor David Ord was not satisfied with the rigour of the Panel's methodology, but I conclude that he had already made that view clear in his question, and would shortly have another opportunity to express that view in the debate on the item. Accordingly, I find that his remark was unnecessary.

The word "mindless" carries the clear connotation that the Panel had not applied themselves properly to the issue, but had gone through a mechanical exercise to arrive at their recommendations. The evidence is that, whilst it may be reasonable to suggest that the Panel's chosen methodology did not produce an objective absolute justification for their recommendation, but primarily a justification by comparison with the existing level of Basic Allowances in neighbouring authorities (which might themselves be unjustified), and that the Panel did not factor into their calculations the ratio of residents to Councillors in each authority, they still did approach their task conscientiously and produced a reasoned report and recommendations. Accordingly, it was incorrect of Councillor David Ord to characterise the Panel's report and recommendations as "mindless".

Whatever his private views, I consider that it was wholly inappropriate for Councillor David Ord to express his view publically, in a manner which he acknowledges was intended to be heard by Councillors and by John Anderson, at a point in the consideration when John Anderson had no reasonable opportunity to respond. Accordingly, **I find that in making this remark, Councillor David Ord failed to treat the Independent Remuneration Panel with respect and, in doing so in such a public forum, conducted himself in a manner which could reasonably be regarded as bringing the Authority and his office into disrepute.**

5.1.3 Councillor David Ord's gesture to Councillor Frank Lott

The undisputed evidence is that, after Councillor David Ord made the remark referred to above in response to John Anderson, Councillor Frank Lott activated his microphone and drew the Chair's attention to this remark and expressed the view that it was unacceptable conduct. In response, Councillor David Ord acknowledges that he made a gesture to Councillor Frank Lott comprising raising his left hand with the middle finger extended. This is widely recognised as a rude signal broadly equivalent to a "V" sign. Councillor David Ord himself agrees that this was unacceptable and states that he tried to speak to Councillor Frank Lott after the Council meeting and to apologise.

However much he may feel that the Labour Councillors work together with the Labour Mayor to stifle his legitimate voice of democratic opposition, this gesture was not a legitimate or reasonable response. It was just plain rude. Accordingly **I find that in making this gesture to Councillor Frank Lott, Councillor David Ord failed to treat Councillor Frank Lott with respect and, in doing so in such a public forum, conducted himself in a manner which could reasonably be regarded as bringing the Authority and his office into disrepute.**

5.1.4 Interrupting and speaking across the Mayor

I conclude above that, after the completion of the named vote in respect of Members' Allowances, the Mayor made a provocative and inappropriate intervention to question whether Councillor David Ord and other Councillors who had voted against the increase in Basic Allowances could forego the increase. Councillor David Ord interrupted the Mayor and spoke across her, shouting. I am clear that Councillor David Ord's conduct was inappropriate and disorderly, in breach of the Council's Rules of Debate. However, as it was in response to the Mayor's provocative intervention, **I do not find that it was a failure to treat the Mayor or the Chair of Council with respect.**

5.1.5 Councillor David Ord's salute on leaving the Chamber

As set out above, I am satisfied that Councillor David Ord's response to the Mayor's intervention, variously described as "shouting", "gesticulating" and "ranting", was disruptive conduct and that the Chair of Council acted properly in asking him to leave the Chamber. I have concluded above that Councillor Ord then stood up and, upon doing so or from a position within a couple of paces of his chair, came to a position of "at attention" and gave a Nazi or Fascist salute to the Chair, with the intention of causing offence.

I find that in so doing he failed to treat the Chair of Council with respect and, in doing so in such a public forum, conducted himself in a manner which could reasonably be regarded as bringing the Authority and his office into disrepute.

I have to remark that even if, as Councillor David Ord testifies, he intended to make a Bellamy salute, I would still find that he failed to treat the Chair of Council with respect and conducted himself in a manner which could reasonably be regarded as bringing the Authority and his office into disrepute, in that he should never have made any such gesture with the intention of causing offence, and he should reasonably have anticipated that most if not all of those present would perceive his gesture as a Nazi or Fascist salute, with the inevitable connotations and offence.

5.1.6 Councillor David Ord's intentions in using these words

I asked Councillor David Ord what his intention had been in using these words of Councillor Brian Burdis and whether he intended to bully or intimidate him. Councillor David Ord described this suggestion as "bollocks" and said that in his opinion Councillor Brian Burdis was trying to suppress legitimate democratic opposition.

5.2 Wallsend Ward Facebook

THIS PARAGRAPH HAS BEEN REDACTED AS IT RELATES TO A SEPARATE COMPLAINT NOT RELATED TO THE COMPLAINTS BEING DEALT WITH BY THE SUB-COMMITTEE AT THIS MEETING.

5.3 Councillor David Ord's description of Councillor Brian Burdis as "this despicable little man" and as "this scum".

I find no justification for Councillor David Ord's description of Councillor Brian Burdis as "this despicable little man" and as "this scum". I have found nothing in Councillor Brian Burdis' conduct which merits criticism, let alone abuse. Councillor David Ord's use of these phrases is not part of any reasoned debate, but simply abuse, designed to demean Councillor Brian Burdis.

Accordingly, I find that Councillor David Ord did fail to treat Councillor Brian Burdis with respect in describing him as "this despicable little man" and as "this scum".

I found no evidence that Councillor Brian Burdis was doing anything other than reacting genuinely and reasonably to Councillor David Ord's deliberately offensive conduct, and I found no evidence of any concerted action between Labour Councillors, or of conduct on their part which was not entirely justified by Councillor David Ord's conduct. In my assessment, Councillor David Ord has a reasonable knowledge of Councillor Brian Burdis and knows or ought to know that he is not likely to be intimidated in pursuing a standards complaint by a wholly unmeritorious counter complaint or by personal abuse. Accordingly, I find that in applying these epithets to Councillor Brian Burdis, Councillor David Ord was simply being rude and offensive, but **I find no evidence that his purpose in doing so was to bully or intimidate Councillor Brian Burdis.**

Peter Keith-Lucas

Consultant Partner

Bevan Brittan LLP

30 November 2015

Appendices

1. Copies of complaints.
2. List of Interviewees.
3. Agenda and minutes for the Council Meeting of 27 November 2014, including the report in respect of Members' Allowances
4. Transcripts of Interviews