



**Report of Helen Lynch
Monitoring Officer and Head of Legal and Democratic Services**

Electoral division(s) affected:

Spennymoor

Purpose of the Report

1. This report summarises the issues relating to Member Code of Conduct Complaints, referred for determination by a Hearing Panel of the Standards Committee (the Panel) to take place on 23 November 2021.

Executive summary

2. The Monitoring Officer has received four complaints against Councillor Pete Molloy (the Member) of Spennymoor Town Council. The complaints, following initial assessment and investigation have been referred for consideration and determination by a Panel.
3. The complaints relate to allegations of conduct of the Member in his capacity as a Spennymoor Town Councillor towards officers of the Town Council and posts he has made on social media.

Recommendations

4. The Panel is recommended to:
 - a. determine as a preliminary matter, whether the Panel Hearing should be open to the Press and Public in full or in part; and
 - b. consider the investigation report and reach decisions in respect of each complaint on:
 - i. Factual findings;
 - ii. Whether, and if so how, the Code has been breached by the Councillor; and
 - iii. If there has been a breach of the Code what action, if any, is required.

Background

5. Councillor Pete Molloy, was elected to Spennymoor Town Council in May 2019. As a member of the Town Council, the Member is expected to behave in accordance with the Member Code of Conduct. A copy of the current Member Code of Conduct for Spennymoor Town Council is shown at Appendix 2.
6. On 5 January 2021 the Monitoring Officer acknowledged receipt of two Code of Conduct complaints from two officers of the Town Council (COM 322 and COM 324). A complaint was also received from the Town Council (COM 323), the allegations within the complaint largely mirrored those raised by the officers of the Town Council.
7. The Monitoring Officer received a Code of Conduct complaint from a member of the public dated 13 July 2021 relating to posts made on social media by Councillor Pete Molloy during his time as a Spennymoor Town Councillor (COM 364).
8. A summary of each complaint to be considered by the Hearing Panel of the Standards Committee (the Panel) is set out within this report. Due to the nature of the complaints, the complaints are presented in the proposed order for the Panel to consider than chronological order. This approach has been taken to assist in the running order of the hearing and reduce disruption should parts of the complaints need to be considered in private.

Preliminary Consideration

9. As a preliminary consideration, the Panel are to determine whether the hearing should be open to the public and press. There is a presumption that meetings of the Panel will be open to the public and press unless confidential information or exempt information is likely to be disclosed.
10. The Local Determination Procedure shown at Appendix 3 of this report sets out the circumstances in which hearings (or parts of hearings) can or should be held in private. These are:
 - (a) A hearing must be held in private where this is necessary to prevent confidential information being revealed.

Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.

- (b) The law also gives the Hearing Panel the power to hold a private meeting to prevent 'exempt information' being revealed to the public.

The categories of 'exempt information' are those set out in Schedule 12A to the Local Government Act 1972. However, regulations also provide for two additional categories of 'exempt information' in relation to the Hearing Panel namely information which is subject to any obligation of confidentiality or information which relates in any way to matters concerning national security.

11. The Panel will need to have regard to Article 6 of the European Convention on Human Rights, and Section 6(1) of the Human Rights Act 1998 which places a duty to act fairly and in line with the rules of natural justice. Article 6 favours public hearings, except in specific circumstances.
12. If the Panel decide to exclude the public to prevent 'exempt information' being revealed, it will only exclude the public for part of the proceedings. For example, if a witness' evidence is likely to reveal 'exempt information', the public will only have to be excluded while that witness is giving evidence. If evidence is heard in private, the Chair of the Panel will warn those present not to mention that evidence during the public parts of the hearing, or outside the hearing. The Panel may also need to use appropriate initials to protect the identity of witnesses during the hearing and in any public documentation.
13. The Panel in considering whether the press and public should be excluded from the hearing, will take into account any representations from the Investigating Officer, the Member and the Independent Person with reasons why the Panel should make such an exclusion.

COM 364

14. This complaint was presented by a member of the public concerning a large number of Facebook posts published by the Member said to express "racist views, religious discrimination and sexual orientation discrimination." The posts subject to the complaint are shown within the investigation report at Appendix 4, pages 69 to 88.
15. A number of the posts were published prior to the Member being elected. The Code of Conduct only applies where a member is acting in their official capacity. The Member was first elected to Spennymoor Town Council in May 2019. Posts made prior to taking office are outside the scope of Member Code of Conduct complaints and therefore only posts published after the election are considered within this procedure.
16. The allegations relate potential breaches of the Spennymoor Town Council Member Code of Conduct, a copy of the current Code of Conduct is shown Appendix 2. A summary of the relevant paragraphs of the Code is shown below:

... the code applies whenever you:

conduct the business of the Council (including the business of your office as an elected councillor or co-opted member); or act, claim to act or give the impression you are acting as a representative of the Council.

...

Act in accordance with the principles in paragraph 2.21 and, in particular:

- (j) Always treat people with respect, including the organisations and public they engage with and work alongside;
- (n) Not to bring the role of Member or the local authority into disrepute and be aware that the actions and behaviour of a Member are subject to greater scrutiny than that of ordinary members of the public.

17. On 13 August 2021, the complaint was referred for investigation which was recorded in the decision notice shown within Appendix 4 at pages 113 to 115. Mr Matt Lewin was appointed as the Investigating Officer. Another matter was also referred for investigation, specifically COM 360 however following an investigation, it was determined that the outcome for the complaint was no further action and this was recorded in a decision notice dated 21 October 2021.
18. A report was prepared by the Investigating Officer which is shown at Appendix 4. The Investigating Officer within the report sets out at paragraphs 15 to 18 (pages 54 to 55) the provisions of Article 10 of the European Convention on Human Rights. This highlights that the Member has the right of freedom of expression protection under Article 10, which includes:

“the freedom to hold and express opinions and thus protects the right to criticise, speculate and make value judgments.

Statements on political issues or other matters of general interest attract enhanced protection under the law, meaning that there are relatively few limits which can be imposed on “political speech”. As a result, even statements which offend, shock or disturb may be protected by the law.

However, freedom of expression is not an absolute right, which means that speech which spreads, incites, promotes or justifies violence, hatred or intolerance may be lawfully restricted.”

19. The Investigating Officer also considered official capacity as detailed within paragraphs 19 – 24 of the investigation report (pages 55 to 57). There is no legal definition of “official capacity”.
20. The Committee on Standards in Public Life considered the issue of official capacity and social media in its report, Ethical Standards in Local Government. The Committee is a leading authority in this field and the Investigating Officer invites the Panel to adopt the approach and guidance of the Committee for Standards in Public Life which is set out in full at paragraph 23 of the investigation report at page 56.
21. The Member has participated in the investigation. He was interviewed by the Investigating Officer in relation to the allegations. The Member stated that the posts were published on his personal Facebook page and therefore were not subject to the Member Code of Conduct. He also stated that the posts had not been removed by Facebook for violating their terms of service and that he had not been the subject of any criminal investigation as a result of the posts. The Member was also given the opportunity to comment on the draft report which appears within Appendix 4 at pages 129 – 132.
22. The Investigating Officer considered that the posts were made in an official capacity (paragraphs 44 to 51 of the investigation report) and that these posts are in breach of the Code (paragraphs 52 to 58 of the investigation report), specifically that the posts express Islamophobic and racist views.
23. The conclusion of the Investigating Officer is shown at paragraph 60(b) of the report which finds a breach paragraph 2.4 (j) of the Code in that they fail to show respect to others.
24. Following the findings of the Investigating Officer, the Monitoring Officer in consultation with the Independent Person, Kayleigh-Louise Wilkinson, recommended that this matter be referred for determination by the Standards Committee Panel. A copy of the decision notice recording this is shown at Appendix 5 (pages 135 to 137), dated 21 October 2021.
25. In accordance with the Local Determination Procedure, the Member was invited to provide his comments on the report and his submissions to the Panel which are shown at Appendix 6 (page 141).

COM 322 - COM 324

26. As set out at paragraph 6 of this report, three complaints were received relating to conduct towards officers of the Town Council.
27. COM 322, relates to a complaint submitted by an officer of the Council, about a comment made by the Member in a workshop meeting of the Council, and a subsequent post the Member published on Facebook, suggesting that the officers post should be gotten rid of.
28. COM 324, relates to a complaint made by another officer of the Council, alleging that the Member bullied them and made an unfounded accusation on Facebook that they had conspired to make a false allegation of bullying against him.
29. COM 323, is a complaint presented by the Town Council which repeats the allegations regarding the conduct of the Member towards the two officers.
30. The allegations relate to the following paragraphs of the Member Code of Conduct for Spennymoor Town Council. A copy of the Code of Conduct in place at the time of the complaint is shown at pages 161 to 168 within the Investigating Officers report at Appendix 7. The relevant paragraphs of the Code in place at the time of the complaint are:
 1. he/she shall behave in such a way that a reasonable person would regard as respectful at all times, and not bring the Town Council or their office into disrepute.
 2. he/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.
 5. he/she shall not share, discuss or disclose information to others which is confidential or where disclosure is prohibited by law.

The Code of conduct was updated in July 2021 and the corresponding paragraphs of the current Member Code of Conduct are paragraphs (j), (l) and (m) and are shown at Appendix 2.

31. On 13 May 2021, the complaints were referred for investigation and was recorded in the decision notice shown at pages 287 to 293 of Appendix 7. Mr Matt Lewin was appointed as the Investigating Officer and a copy of the report is shown at Appendix 7.
32. Given the overlap between the COM 323 and the two personal complaints COM 322 and COM 324, the Investigating Officer consolidated COM 323 as part of the consideration of the complaints from officers.

COM 322

33. The details of the complaint are set out at paragraph 27 above.
34. The Investigating Officer recorded that the circumstances of any individual's employment are both private and sensitive and, in particular, termination of an individual's employment should never be discussed in such a casual and public way.
35. The Investigating Officer found that the statements of the Member breached paragraph 3.1, failure to behave in such a way that a reasonable person would regard as respectful and bringing the Council into disrepute, of the Code. Additionally, the Investigating Officer found that the two statements breached paragraph 3.2, acting in a way which a reasonable person would regard as bullying, of the Code.

COM 324

36. The details of the complaint are set out above at paragraph 24. The Investigating Officer outlines in his report the background matters between the Member and the Complainant shown at paragraphs 11-14 of Appendix 7 (page 147).
37. The allegations relate to whether:
 - a. the Member breached the Code by making false and unfounded complaints about the officer as set out at paragraph 15 - 29 of the investigation report.
 - b. a Facebook post on 4 December 2020 constitutes a breach of the Code, the details of which are shown at paragraphs 30 - 35 of the investigation report.
38. As part of the investigation, the Member was interviewed and his views sought. The Member advised the Investigating Officer that he had been subject to victimisation by the officer. The findings of the Investigating Officer on this are shown at paragraphs 39 – 43 of the investigation report, which confirms that the Investigating Officer did not accept that there had been victimisation towards the Member by the officer.
39. The Investigating Officer found that both the statements and post on Facebook of 4 December 2020 constitute political speech and attract enhanced protection under the law. The Investigating Officer highlights

that the right of freedom of expression is not absolute; it may lawfully be restricted where there is a justification for doing so.

40. In conclusion of the investigation, the Investigating Officer made the following findings:
 - a. The Member did not breach of the Code in respect of the complaints by the Member relating to the officer, this is recorded with reasons at paragraphs 44 to 46 of the report.
 - b. The Member did breach the Code, in respect of the Facebook post dated 4 December 2020, namely:
 - i. paragraph 3.1, failure to behave in such a way that a reasonable person would regard as respectful and bringing the Council into disrepute, of the Code.
 - ii. paragraph 3.2, acting in a way which a reasonable person would regard as bullying, of the Code.
41. The reasons for the finding are shown at paragraphs 47 to 53 of the investigation report at Appendix 7.
42. Following the findings of the Investigating Officer, the Monitoring Officer in consultation with the Independent Person, Kayleigh-Louise Wilkinson, recommended that this matter be referred for determination by the Standards Committee Panel. A copy of the decision notice recording this is shown at Appendix 8, dated 21 October 2021.
43. In accordance with the Local Determination Procedure, the Member was invited to provide his comments on the report and his submissions to the Panel which are shown at Appendix 9 of this report.

Role of the Panel

44. The pre-hearing process has been followed with a view to limiting the issues for decision by the Panel. The Local Determination Procedure for the Panel to follow is shown at Appendix 3.
45. Where an investigation finds evidence of a failure to comply with the Code of Conduct and local resolution is not appropriate or possible, the investigation findings will be reported to the Panel for local determination.
46. The role of the Panel is to consider each of the complaints and allegations separately. The Panel will need to consider the evidence presented by the Investigating Officer and the Member.

47. As set out earlier in the report, the Member was able to comment on the draft report and has been provided with a copy of the final report on which he has also commented, the responses to the Member are shown at Appendices 6 and 9.
48. Having heard from the Investigating Officer and the Member, it is the role of the Panel to make findings of fact in relation to the conduct complained of and determine whether or not they consider that the Member has breached the Code of Conduct. The Panel is entitled to reach a different conclusion to the Investigating Officer.
49. Before reaching a decision on the allegations, the Panel must consider representations from the Independent Person as to whether or not there has been a breach of the Code.
50. If the Panel conclude that there has been a breach of the Code of Conduct it must decide what action, if any, should be taken. The Panel will consider representations from the Investigating Officer, Member and Independent Person on the issue of sanctions.
51. The Localism Act provides the following sanctions for current Councillors which are set out in the Local Determination Procedure and are as follows:
 - a. Censure of the Member;
 - b. Recommending to Full Council, or to the Town or Parish Council that the Member be removed from any or all Committees or Sub-Committees;
 - c. Recommending to Full Council, or to the Town or Parish Council, that the Member be removed from all outside appointments to which s/he has been appointed or nominated by the authority
 - d. Recommending to Full Council, or to the Town or Parish Council, that the Member's access and use of resources of the Authority be restricted for a maximum period of six months, provided that any such restrictions imposed upon the Member:
 - i. are reasonable and proportionate to the nature of the breach; and
 - ii. do not unduly restrict the Member's ability to perform his functions and duties as a Member;
 - e. A requirement that the Member submit a written apology.
 - f. A requirement that that Member undertake training as specified by the Hearing Panel.
 - g. A requirement that that Member undertake conciliation as specified by the Hearing Panel;

52. The Hearing Panel will announce its decision and the end of the Hearing and as soon as practicable after the hearing the Hearing Panel provide a written decision notice, which will be sent to the Complainants, the Member, the Clerk to the Town Council and published on the Council's website.
53. The Hearing Panel will announce its decision at the end of the hearing. As soon as practicable after the hearing, the Hearing Panel will give its full written decision to the relevant persons involved.
54. A summary of the decision and reasons for that decision will be published on the Council's website.

Background papers

- None

Author(s)

Helen Lynch

Tel 03000 269729

Kamila Coulson-Patel

Tel 03000 269674

Appendix 1: Implications

Legal Implications

The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles.

Finance

None.

Consultation

None.

Equality and Diversity / Public Sector Equality Duty

None.

Climate Change

None

Human Rights

None

Crime and Disorder

None

Staffing

None

Accommodation

None

Risk

None

Procurement

None