

Standards Committee Hearing Panel

21 September 2023

Member Code of Conduct Complaints

COM 393, 397 and FS-Case-51439036



Report of Helen Bradley 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 21 September 2023.

Executive summary

2. The Monitoring Officer has received three complaints against Councillor Pete Molloy (the Subject Member) of Spennymoor Town Council. The two complaints from 2022 (COM 393 and COM 397) were assessed in line with the Local Assessment Procedure with the outcome of these initial assessments being investigation, which subsequently recommended the complaints be referred to a Hearing of the Standards Committee Panel. FS-Case-51439036 was assessed under the same procedure with the outcome of that being the complaint be referred to a Panel of the Standards Committee for consideration and determination.
3. The complaints relate to two separate issues arising from the three complaints. Two of the complaints relate to allegations of conduct of the Subject Member in his capacity as a Spennymoor Town Councillor towards officers of the Town Council including a failure to comply with mediation, as required of him following a finding by a Hearing Panel of the Standards Committee of 23 November 2021. The third complaint relate to allegations of conduct of the Member in his capacity as both a Spennymoor Town Councillor and as a Durham County Councillor and concern 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 for COM 393 & 397 and the decision notice for FS-Case-51439036, to 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 is a member of Spennymoor Town Council and has been in office since May 2019. Councillor Molloy is also a Durham County Councillor and has been since May 2021. As a member of the Town Council and as a Durham County Councillor, Councillor Pete Molloy expected to conduct himself in accordance with both the Town Council's Member Code of Conduct (Appendix 3) and Durham County Council's Code of Conduct (Appendix 2).
6. On 5 April 2022 and 25 April 2022, the Monitoring Officer acknowledged receipt of Code of Conduct complaints (COM 393 and COM 397) from the then Clerk to the Town Council and from a Member of the Town Council. The allegations relate to emails and Facebook posts which are alleged to be disrespectful towards fellow Councillors and the Clerk of the Town Council. The issues raised were similar in nature to those considered by a previous Hearing Panel of the Standards Committee on 23 November 2021 regarding the conduct of the same Member (COM 322, 324 and 364).
7. On 9 May 2023, the Monitoring Officer also received a Code of Conduct Complaint from another Member of the Town Council (FS-Case-514139036) which was acknowledged on 9 May 2023. This complaint was in relation to posts made on social media by the same Member in his capacity as a Spennymoor Town Councillor and as a Durham County Councillor.
8. A summary of each of the complaints to be considered by the Hearing Panel of the Standards Committee (the Panel) is set out below.

Preliminary Consideration

9. As a preliminary consideration, the Hearing Panel are to determine whether the Hearing should be open to the public and press. There is a presumption that meetings of the Hearing Panel will be open to the public and press unless confidential information or exempt information (within the meaning of Schedule 12A to the Local Government Act 1972) is likely to be disclosed.
10. The Procedure for Member Code of Conduct Complaints shown at Appendix 4 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. The categories are as follows:

- i. Information relating to any individual.
- ii. Information which is likely to reveal the identity of an individual.
- iii. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- iv. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- v. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- vi. Information which reveals that the authority proposes -
 - a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - b) to make an order or direction under any enactment.
- vii. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

(c) 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 Hearing Panel decides 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 Hearing Panel will warn those present not to mention that evidence during the public parts of the hearing, or outside the hearing. The Hearing 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 accordance with the procedure, in considering whether the press and public should be excluded from the meeting, will take into account any representations from the Investigating Officer, the Member concerned or his representative and the Independent Person with reasons why the Panel should make such an exclusion.

COM 393 & COM 397

14. COM 393 was submitted by a (now) former Officer of the Town Council who was at the time of the complaint the Clerk to Spennymoor Town Council. At the time the complaint was made, the Officer was still employed by the Town Council. COM 393 was submitted by a Member of the Town Council.
15. The complaints allege a failure of the Subject Member to comply with actions required to him as a result of a finding by the Hearing Panel of the Standards Committee of 23 November 2021, in respect of previous complaints against the Member (COM 322, 323, 324 and 364).
16. In addition, the complaint concerns an email sent by the Subject Member to fellow Town Councillors in relation to a complaint he had made against the Complainant that she had lied and improperly added information to a previous complaint against him, which was dismissed by the Town Council. In the email, the Subject Member reiterates his allegations and calls other Town Council Members "spineless cowards".
17. Further, the complaint contains a post which the Subject Member had posted on the Spennymoor What's Happening and his Councillor Facebook Page. The post reiterates the allegations against the Clerk and refers to having sent the above email calling other Members of the Town Council "spineless cowards". The post also alleges that another Councillor was protecting the Complainant because she had previously assisted in the payment of a grant of £30k to the cricket club of which he was president, and that the Complainant had also assisted one of Councillor's group members to obtain a lease from the Town Council for a peppercorn.
18. The allegations relate potential breaches of the Member Code of Conduct for Spennymoor Town Council, a copy of the current Code of Conduct is shown Appendix 3. 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 2.2 and, in particular:

- (e) Listen to the interests of all parties, including relevant advice from statutory and other professional officers, take all relevant information into consideration, remain objective and make decisions on merit;
- (g) Contribute to making the Authority's decision-making processes as open and transparent as possible to ensure residents understand the reasoning behind those decisions and are informed when holding the Authority to account but restricting access to information when the wider public interest or the law requires it;
- (h) Behave in accordance with all legal obligations, alongside any requirements contained within the Council's policies, protocols and procedures, including on the use of the Council's resources;
- (i) Value colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government;
- (j) Always treat people with respect;
- (m) Not to bully or harass any person (including specifically any council 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 the code of conduct.

19. On 6 June 2022, the complaints were referred for investigation which was recorded in the decision notice shown at pages 63 to 65 of Appendix 5. Mr Philip McCourt was appointed as the Investigating Officer.
20. A report was prepared by the Investigating Officer which is shown at Appendix 6. The Investigating Officer within the report sets out at paragraph 8.3, the provisions of Article 10 of the European Convention on Human Rights, which states:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions and penalties as prescribed by law and are necessary in a democratic society, ... for the protection of the rights and interests of others....”

21. The Investigating Officer at paragraph 8.4 of the report further notes that:

“The right is therefore not absolute and it may be restricted if (and insofar as) restriction is prescribed by law and “necessary in a democratic society for the protection of the rights and interests of others”. It should be noted, however, that the courts have recognised the importance of expression in the political sphere; it has long-recognised that what is said by elected politicians is subject to enhanced protection, i.e. a higher level of protection, under Article 10. In practice, a councillor’s right to free speech means that they can make comments, in a political context, including those that might be considered provocative, offensive and exaggerated. In addition, value judgments are tolerated even if untrue, so long as they have a level of factual basis.”

22. The Member has participated in the investigation. He was interviewed by the Investigating Officer in relation to the allegations. The below is a summary of the evidence he provided to the Investigating Officer in relation to COM 393 & 397 (paragraphs 5.32 – 5.38 of the Investigation Report).

23. The Subject Member stated that he did not take part in the mediation that was arranged as in part he believed it was to be led by the Monitoring Officer, which was not the case, and that he had believed that it was just in respect of himself and the Clerk, rather than including another Officer as he felt there was no need for that. The Investigating Officer states that ‘in essence, [the Subject Member] did not proceed with the mediation on the basis that he felt “it wouldn’t achieve anything because basically, the political party councillors have got her back which is quite evident through the recent special committee meetings”.’

24. The Investigating Officer further states that the Subject Member ‘went on to explain that a number of people, including his wife, had made complaints about [the Clerk’s] conduct as Town Clerk but that he felt that the Members of the Council had rallied around her and that, in relation to any mediation there is no point in mediation “because the cards are stacked heavily in her favour”.

25. With regards to the emails and the Facebook posts, the Subject Member stated that he had “called them a bunch of spineless cowards and quite frankly they are”. He explained to say this was all “political speech” and that “I am the opposition to them”.
26. In respect of the emails and the Facebook posts relating directly to the former Town Clerk and in relation to the topic of his comments in respect of the other Councillors being unduly protective or supportive of the former Clerk, the Subject Member considers he was entitled to do so because of the behaviours of the her in her role as Town Clerk and the failure of other Members of the Town Council to address them, in that the Clerk runs the Council rather than Members.
27. The Subject Member considers that the practices of the former Clerk and the Councillors supporting her are corrupt and that “people only know what’s going on in Spennymoor through the independents and they have the right to know”.
28. The Subject Member cited examples of failure of a Member not declaring an interest and the Clerk failing to unlock doors for public access during a meeting.
29. The Subject Member also provided links to recorded webcasts of these meetings to the Investigating Officer. The Subject member also makes an allegation concerning the failure to undergo proper public procurement and, instead, make a direct award contract to a company.
30. The Investigating Officer’s considerations of the allegations can be found at paragraphs 7 – 9 of the Investigation Report.
31. In summary, the Investigating Officer has found as follows:

I. Alleged failure to participate in mediation

The Investigating Officers view is that the objections of the Subject Member do not invalidate the action determined to be taken in relation to him as a Member of the Town Council by the DCC Hearing Panel hearing and that accordingly he has further failed to comply with the Town Council’s Code of Conduct in respect of paragraphs 2.4(g) and 2.5.

II. Alleged content of the email to fellow Members of the Town Council

The Investigating Officer states that given the history of the Subject Members conduct towards the former Clerk they “cannot come to a view that the statement was made as a genuine value judgment based upon a reasonable factual basis but, rather, that it was said

as a deliberate means by which to attack or undermine [the former Clerk] in the course of her employment and was expressly addressed to those who, as a collective membership, are the employer of [the Clerk]." The Investigating Officer states that they will discuss the relationship further in paragraph 9.

III. Alleged content of the social media posts

The Investigating Officer considers that the posting of the Subject members "comments and accusations were motivated by his personal animosity towards [the former Clerk] and his frustrations at her not being disciplined in respect of he and his wife's personal complaint against her on this occasion; these posts were an act of aggression and a direct form of bullying". 9.25 of the report states that the Investigating Officer considers that there has been a failure by the Member to comply with the Council's Code of Conduct.

32. Following the findings of the Investigating Officer, the Monitoring Officer in consultation with the Independent Person, Chris Hugill, recommended that this matter be referred for determination by the Standards Committee Panel.
33. In accordance with the Procedure for Member Code of Conduct Complaints, the Member was invited to provide his comments on the report and his submissions to the Panel which are shown at Appendix 7 of this report (page 119).

FS-Case-514139036

34. The Monitoring Officer received the complaint FS-Case-514139036 on 9 May 2023. The complaint was submitted by another Member of Spennymoor Town Councillor and was in relation to a post made by the Subject Member in a Facebook Group known as "Spennymoor What's Happening Politically".
35. The complaint was considered in accordance with the Local Assessment Procedure and after consultation with the Independent Person, was referred directly for consideration by a Hearing Panel of the Standards Committee. The Monitoring Officer considered that there was sufficient information within the complaint and response of the Subject Matter for the Panel to consider the matter without the need for an investigation. A copy of the decision notice was sent to the Subject Member on 25 May 2023 and is attached at Appendix 8.
36. The post in question purported to be in response to an article published in the Daily Mail online under the headline "Bridgerton Star Adjoa Andoh stuns ITV", which referred to a comment made by Adjoa Andoh that the

balcony of Buckingham Palace at HM King Charles III's Coronation was "terribly white".

37. A screenshot of the Subject Members post is provided at Appendix 9 which can be found at page 205.
38. The Complainant alleges in response to the Subject Member's post that he "has continued to air wholly unacceptable and racist views in a public forum on the Spennymoor What's Happening Politically Facebook page. Whilst it was shared from his personal page it cannot be separated from his identity as a councillor."
39. In response to the complaint, the Subject Member admits that he made the post however, he does not consider that the remarks he made were racist. He also considered that the complaint was politically motivated noting that the Complainant is a member of the Labour Party, whereas he is an Independent.
40. The Subject Member also does not believe that he breached the Code of Conduct as the original Facebook post was made in his personal capacity as he used his personal Facebook profile and not his "Councillor Pete Molloy" profile.
41. The allegations relate to potential breaches of the Member Code of Conduct for both Durham County Council and Spennymoor Town Council a copy of the current Codes of Conduct is shown Appendices 2 and 3. A summary of the relevant paragraphs of the Codes 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.

...

- Behave in accordance with all legal obligations;
- Always treat people with respect;
- Not 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.

42. The Subject Member was asked for his comments on the draft decision notice. The Subject Member stated that he had, prior to receipt of the draft decision notice, been unaware that the posts which identify him as a Councillor on his 'Pete Molloy' Facebook page, were visible on his publicly

accessible timeline. He stated that he has since adjusted his privacy settings so that they are no longer publicly accessible. He also removed the post subject of this complaint from his 'Councillor Pete Molloy' Facebook page.

43. As per the Procedure for Member Code of Conduct Complaints, the Independent Person Karen Milner's views were sought, to which she was in agreement with the action proposed of a referral to the Standards Hearing.

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 pre-hearing process can be found within section 6 of the Procedure for Member Code of Conduct Complaints. A copy of the Procedure can be found at Appendix 4. The Procedure for Member Code of Conduct Complaints was adopted in June 2023 following a revision of the Local Assessment Procedure.
45. Where the assessment of the complaint or where an investigation finds evidence of a failure to comply with the Code of Conduct and informal resolution is not appropriate or possible, the investigation findings will be reported to a Hearing Panel of the Standards Committee 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 in relation to COM 393 & COM 397 and has been provided with a copy of the final report. The response from the Member to the draft report can be found at paragraph 11.4 within the Investigation Report (Appendix 6).
48. The Member was also provided a copy of the draft decision notice of FS-Case-51439036 and was able to comment on this. The response from the Member is shown at paragraph 51 in the final decision notice (Appendix 8). The Member has been provided with a copy of this decision notice.
49. Having heard from the Investigating Officer, the Presenting 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 or the Presenting Officer.

50. 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.
51. 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.
52. The Localism Act provides the following sanctions for current Councillors which are set out in the Procedure for Member Code of Conduct Complaints 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;
53. 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.
54. 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.

55. A summary of the decision and reasons for that decision will be published on the Council's website.

Background papers

- None

Author(s)

Lauren Smith

Tel: 03000 267870

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

In deciding whether the Hearing should be held publicly, or private, 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. Crime and Disorder

Staffing

None

Accommodation

None

Risk

None

Procurement

None