

***Report of the Hearing
Sub-Committee of the
Standards Committee***

The HEARING SUB-COMMITTEE OF THE STANDARDS COMMITTEE reports as follows:-

1. Complaint regarding Councillor Stephen O'Brien (Ref:14/18)

On 10 March 2022 the Hearing Sub-Committee of the Standards Committee held a hearing in respect of a complaint submitted to the Monitoring Officer in September 2018 by Councillor Antony Mullen, on behalf of the Sunderland Conservative Association Management Board. The complaint related to a series of remarks made by Councillor O'Brien on Twitter about the relationship between the Sunderland Council Conservative Group and the Labour Group, focussed on the interaction between the two groups' representatives on the Children, Education and Skills Overview and Scrutiny Committee.

An Assessment Sub-Committee referred this matter for investigation and the complaint was subsequently referred to Mr David Kitson of Bevan Brittan LLP, whose investigation focussed on whether there had been a potential breach of paragraphs 1 and 2 of the Code of Conduct for Members ('the Code'), which state:

- *You must treat others with respect, including Council officers and other elected Members.*
- *You must not bully 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 this Code of Conduct.*

Mr Kitson concluded that Councillor O'Brien had breached paragraph 1 of the Code of Conduct and had not breached paragraph 2 of the Code. The matter was then referred to a Hearing Sub-Committee of the Standards Committee on 10 March 2022.

The Hearing Sub-Committee considered the report of Mr David Kitson and the views of the Council's Independent Person and:

- (a) accepted the findings of the Investigating Officer and determined that on the balance of probability, Councillor O'Brien had breached paragraph 1 of the Code of Conduct for Members
- (b) found that there had been no breach of paragraph 2 of the Code.

In accordance with the Council's Arrangements for Dealing with Complaints, the Hearing Sub-Committee reviewed the potential sanctions available to it, and determined to impose the following sanctions:

- Councillor O'Brien to be issued with a formal censure by the Hearing Sub-Committee;

- A recommendation that Councillor O'Brien issue a written apology (in a form approved by the Monitoring Officer) to former Councillor Bob Francis;
- Councillor O'Brien is recommended to delete the tweets that led to this complaint from his Twitter account;
- The Monitoring Officer is recommended to offer training to Councillor O'Brien on the appropriate use of social media by Members of the Council; and
- The Hearing Sub-Committee to refer its findings to full Council for information, at the soonest available opportunity.

Councillor O'Brien subsequently requested a review of the Hearing Sub-Committee's decision, and the matter was referred to the Independent Person for South Tyneside Council to undertake this review.

The Hearing Sub-Committee met again on 12 August 2022 to consider Councillor O'Brien's review request, with the benefit of the submissions received from South Tyneside Council's Independent Person. The Hearing Sub-Committee resolved to confirm its original decision, and the sanctions as set out above.

Accordingly, the Committee refers its findings in this matter to Council. A copy of the full Decision Notice relating to this complaint is attached at Appendix 1 to this report for information.

APPENDIX 1 – DECISION NOTICE

HEARING SUB-COMMITTEE OF THE STANDARDS COMMITTEE COMPLAINT REGARDING COUNCILLOR STEPHEN O'BRIEN (REF:14/18)

DECISION NOTICE

Background

1. A complaint was submitted to the Council's Monitoring Officer on 28 September 2018 by Cllr Antony Mullen ('the Complainant'), on behalf of the Sunderland Conservative Association Management Board.
2. The Complainant alleged that Cllr O'Brien had made a series of remarks on Twitter about the relationship between the Sunderland Council Conservative Group and the Labour Group, focussed on the interaction between the two groups' representatives on the Children, Education and Skills Overview and Scrutiny Committee. The Complainant stated that Cllr O'Brien had alleged on Twitter that former Cllr Bob Francis liked to "cosy up" with Cllr Patricia Smith, the chair of the Children, Education and Skills Overview and Scrutiny Committee and a member of the Labour Group, because Cllr Francis received a special responsibility allowance as Vice-Chair of the same Committee.
3. The Complainant has advised that Cllr Francis did not receive an additional special responsibility allowance for serving as Vice Chair on this Committee. This was also pointed out to Cllr O'Brien by Cllr Robert Oliver as part of the same exchange on Twitter. Later that day, Cllr O'Brien was alleged to have responded to a separate Tweet from the '@SlandTories' Twitter account with a comment of a similar nature about Cllr Francis' motivation for maintaining his role as Vice Chair of the Children, Education and Skills Overview and Scrutiny Committee. The Complainant has alleged that Cllr O'Brien was twice asked by Graham Hall, Chair of the Sunderland Conservative Association Management Board to retract his statements, but did not do so.
4. An Assessment Sub-Committee referred this matter for investigation in February 2019. The complaint was subsequently referred to Mr David Kitson of Bevan Brittan LLP, whose investigation focussed on whether there had been a potential breach of paragraphs 1 and 2 of the Code of Conduct for Members ('the Code'), which state:
 - *You must treat others with respect, including Council officers and other elected Members.*
 - *You must not bully 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 this Code of Conduct.*

5. The Investigating Officer's final investigation report was concluded on 3 August 2021. He found that Cllr O'Brien did breach paragraph 1 of the Code, and that there had been no breach of paragraph 2 of the Code. Cllr O'Brien was invited to respond and provide his own comments in relation to the findings in the Investigating Officer's report, but did not do so.
6. In accordance with the Council's arrangements for dealing with complaints, this matter was then referred to a Hearing Sub-Committee of the Standards Committee.

Hearing

7. A Hearing Sub-Committee met on 10 March 2022 to consider the complaint. Cllr O'Brien did not attend the hearing, and did not respond to any correspondence issued to him which related to the hearing.
8. The Sub-Committee resolved that the hearing be held in private, and relied on paragraphs 1 and 2 of Schedule 12A, Part 1 of the Local Government Act 1972, as the complaint contained information relating to individuals and information which is likely to reveal the identity of individuals. The Sub-Committee also confirmed that any findings of a breach of the Code would subsequently be published.
9. As Cllr O'Brien had not responded to the findings in the Investigation Report, the hearing proceeded on the basis that all of the report was in dispute. In recognition of this, the Investigating Officer presented his case to the Sub-Committee and provided a detailed explanation of how he reached his findings following the investigation process.
10. In presenting his case, the Investigating Officer expressly considered whether the Code did apply to the specific circumstances leading to this complaint. It was noted by the Investigating Officer that although Cllr O'Brien did not refer to his status as a Councillor in his Twitter username, at the time of the tweets his Twitter biography stated that he was a Liberal Democrat Councillor at the Council (referencing the wards for which he was responsible), and that he was the deputy leader of the Liberal Democrat group. Cllr O'Brien had also regularly used the Twitter account to post about Council issues. The Investigating Officer concluded that Cllr O'Brien was giving the impression that he was acting in his capacity as a representative of the Council when he posted the relevant tweets on Twitter, and that any third parties viewing his tweets would reasonably form the same opinion.
11. The Investigating Officer also considered the extent to which Cllr O'Brien's tweets could be said to amount to political comment or a challenge against performance. The Investigating Officer recognised that Cllr O'Brien and former Cllr Francis had chosen to operate in the public political arena, and were therefore expected to have a higher degree of tolerance towards comments and criticism that could be considered offensive or unsavoury.

12. The Investigating Officer acknowledged that while the underlying matter about which the Councillor was tweeting was a political issue, the tweets were primarily intended to undermine both Cllr Francis personally, and the Conservative group in general. The Investigating Officer also recognised that the tweets in question were based on incorrect information, and that (in accordance with the Council's Constitution) Cllr Francis did not and could not receive an additional special responsibility allowance in respect of his role as Vice-Chair of the Children, Education and Skills Overview and Scrutiny Committee. It was noted that despite Cllr O'Brien having been informed that his allegation could not be correct because of the restriction on receiving more than one special responsibility allowance, he refused to correct the error or remove the tweets. The Investigating Officer considered that this failure to take any corrective action was (in his view) disrespectful and that Cllr O'Brien's comments did not amount to 'fair comment' or a difference of political opinion, and the allegations he made were objectively incorrect.

Sub-Committee Findings

13. The Sub-Committee retired to consider its findings, and to hear the views of the Independent Person, Mr Dennis Hall. Mr Hall commented that he was satisfied with the Investigating Officer's report and the findings within. Mr Hall considered that Cllr O'Brien had been given ample opportunity to respond or rebut the findings, and that due process had been followed. Mr Hall also noted that Cllr O'Brien had been offered support from Council officers to assist him in preparing his response to the Investigating Officer's report, but did not respond to this offer.
14. Mr Hall raised concern about the length of time this case had taken to be determined, but acknowledged that this had been due to exceptional circumstances, and the Covid-19 pandemic meant Cllr O'Brien was given extended time in which to respond to the Investigating Officer's report.
15. Having considered the report of the Investigating Officer, the representations made during the hearing, and the views of the Independent Person, the Sub-Committee made the following findings:
- (a) The Sub-Committee accepted the findings of the Investigating Officer and determined that on the balance of probability, Cllr O'Brien had breached paragraph 1 of the Code of Conduct for Members.**
- (b) The Sub-Committee found that there had been no breach of paragraph 2 of the Code.**
16. In reaching their decision, the Sub-Committee acknowledged and agreed with the findings of the Investigating Officer as set out at paragraphs 10-12 above, and found that Cllr O'Brien was giving the impression of acting as a official capacity as a Member of the Council when he posted his tweets, and that the Code therefore did apply.

17. The Sub-Committee commented that this complaint was about upholding the standards expected of an elected Member, and that Cllr O'Brien's comments could have simply been withdrawn or clarified, but he chose not to do so even after his error had been brought to his attention. The Sub-Committee observed that a simple apology from Cllr O'Brien could have most likely settled this matter at an early stage.

Sanctions

18. The Sub-Committee invited representations from the Investigating Officer on whether a sanction should apply, and if so, what form it should take. The Investigating Officer considered that a fair outcome in these circumstances would be for Cllr O'Brien to delete the tweets in question, to apologise to Cllr Francis, and to undertake training about the appropriate use of social media by Members of the Council, which could potentially be tailored to provide support and assistance specific to Cllr O'Brien.
19. The Sub-Committee again retired to consider sanctions, and to take into account the views of the Independent Person on this matter. Mr Hall commented that Cllr O'Brien did not seem to take this matter seriously, having not actively engaged in the investigation or attended the hearing. Mr Hall's opinion was that Cllr O'Brien's behaviour merited censure by the Sub-Committee, as he had behaved badly towards former Cllr Francis, and that the incorrect allegations which were made public as part of his tweets impacted negatively on the Council as a whole.
20. Mr Hall agreed with the proposals put forward by the Investigating officer relating to sanctions, and added that when the Sub-Committee publish a summary of its findings, as part of this they may wish to confirm whether or not Cllr O'Brien has complied with any recommended sanctions.
21. Having considered the representations from the Investigating Officer and the views of the Independent Person, the Sub-Committee reviewed the potential sanctions available to it, and determined to impose the following sanctions:
- Cllr O'Brien to be issued with a formal censure by the Hearing Sub-Committee;
 - A recommendation that Cllr O'Brien issue a written apology (in a form approved by the Monitoring Officer) to former Cllr Bob Francis;
 - Cllr O'Brien is recommended to delete the tweets that led to this complaint from his Twitter account;
 - The Monitoring Officer is recommended to offer training to Cllr O'Brien on the appropriate use of social media by Members of the Council; and
 - The Hearing Sub-Committee to refer its findings to full Council for information, at the soonest available opportunity.

Request for Review

22. On 24th March 2022 Cllr O'Brien e-mailed the Governance Law Specialist requesting a review of the Hearing Sub-Committee's decision. Cllr O'Brien was asked by e-mail to provide his detailed reasons for seeking a review, and was also offered support from officers within the Member Support Team to assist him with setting out his own reasons for seeking a review. Cllr O'Brien did not provide any response, and so the review process proceeded without any additional submissions from Cllr O'Brien.
23. Corraib Maccaba, the Independent Person for South Tyneside Council, agreed to undertake the review. The papers originally submitted to the Hearing Sub-Committee, together with the decision notice and the Council's Arrangements for Dealing with Complaints, were all forwarded to Mr Maccaba for consideration.
24. Mr Maccaba's findings were received by e-mail on 10 June 2022. Mr Maccaba noted that as Cllr O'Brien did not give direction on his reasons for seeking a review or on what aspects of the decision notice he disagreed with, the review proceeded on the basis that Cllr O'Brien disputed the whole of the Investigating Officer's report document, the hearing outcome, and the proposed sanctions. Accordingly, the review process took longer than usual to conclude, as Mr Maccaba had to carefully scrutinise all documentation in its entirety.
25. In summary, Mr Maccaba agreed with the Sub-Committee's conclusion that Cllr O'Brien had breached paragraph 1 of the Code. He also agreed with the decision of the Hearing Sub-Committee that paragraph 2 of the Code had not been breached.
26. In Mr Maccaba's opinion, the sanctions originally proposed by the Hearing Sub-Committee were commensurate with the findings of the report.
27. The Hearing Sub-Committee met on 12 August 2022 and considered Cllr O'Brien's review request with the benefit of the submissions received from South Tyneside Council's Independent Person. In addition, Sunderland City Council's Independent Person, Mr Dennis Hall, reiterated his agreement with the original decision and sanctions.
28. The Hearing Sub-Committee resolved to confirm its original decision as set out in paragraph 15 above, and the sanctions set out in paragraph 21.

Signed: Councillor Peter Gibson – Chair of the Hearing Sub-Committee

