

COUNCIL

6 AUGUST 2024

REPORT OF THE MONITORING OFFICER

A.8 OUTCOME OF THE HEARING CONDUCTED BY THE STANDARDS COMMITTEE IN REGARDS TO ALLEGED BREACHES OF THE MEMBERS' CODE OF CONDUCT BY COUNCILLOR N W TURNER

(Report prepared by Ian Ford)

At the meeting of the Standards Committee (“the Committee”) held on 16 May 2024, it had been reported that, a complaint had been received from Councillor Ernest Gibson (“the Complainant”), an elected Member of South Tyneside Council, and the Chairman of the Local Government Association’s Coastal Special Interest Group, regarding the alleged behaviour of District Councillor Nick Turner, under this District Council’s Members’ Code of Conduct. The aforementioned Complaint had been submitted on 16th August 2023 and had referred to the alleged behaviour of Councillor Turner, at two virtual meetings of the SIG held on 5th June and 29th June 2023, in that Councillor Turner had contravened this Council’s Members’ Code of Conduct. Councillor Turner had been the sole attendee at those meetings from Tendring District Council.

The Committee had been made aware that, on 25th August 2023, the Monitoring Officer had decided that it was reasonable and appropriate that the Complaint merited further investigation. The parties had been informed of that decision and that an external investigator would be appointed. Subsequently, Mr Melvin Kenyon, of Kenyon Brabrook Ltd, had been appointed by the Monitoring Officer as the external investigator for this complaint. Following a thorough investigation, Mr Kenyon had concluded that there was sufficient evidence to show that Councillor Turner, based on a balance of probabilities and the evidence available, had breached Paragraphs 1.1, 1.2, 2.3 and 5.1 of the Council’s Code of Conduct. This conclusion had been set out in Mr Kenyon’s Investigation Report.

All parties had had the opportunity to comment on the Investigation Report and the findings contained therein. The report had been finalised on 10th January 2024.

The Committee had been reminded that, if an investigation concluded that there was evidence of a failure to comply with the Code of Conduct, then the Council’s Complaints Procedure provided the Monitoring Officer with the authority to obtain an informal resolution, in consultation with the Independent Person, where it could reasonably be resolved without the need for a hearing by the Standards Committee.

Although the procedure did not require consultation with an Independent Person if the Monitoring Officer considered that informal resolution was not an appropriate course of action, and that the matter should therefore be referred for a hearing before the Standards Committee, it had been considered that seeking their view on this occasion was beneficial prior to making the decision. The Monitoring Officer had noted that Councillor Turner had offer an apology at the outset, when the complaint had been initially received however, the Monitoring Officer’s thoughts had been captured in the Decision Notice dated 25th August 2023, being as follows:-

“Whilst it is acknowledged that Councillor Turner has resigned from the LGA’s Coastal SIG and apologised for an[y] offence given, it is not considered that informal resolution is

appropriate in this circumstance. There is a wide difference of opinions between the Complainant and Cllr Turner on the manner of the debate within the meetings. Cllr Turner in his response has acknowledged his comments and not denied them, but the impact of them appears to be unappreciated.”

Having read the Investigation Report, the Monitoring Officer had noted that Councillor Turner had offered a further apology for offence caused by his actions, which he had described as unintended and unconscious on his part. However, the Monitoring Officer had not considered those as being appropriate or proportionate and she had therefore determined to refer the matter to the Standards Committee for a hearing to be undertaken by Members.

Accordingly, on 16 May 2024, the Standards Committee had conducted a hearing under the Council’s adopted Hearing Procedure before deciding whether the Councillor Turner had failed to comply with the Code of Conduct and, if so, whether to take any action. In accordance with paragraph 7.1.2 of the Council’s Complaints Procedure the Investigator’s Report had been kept confidential, until the day of that hearing in order to protect the parties. (A full record of the proceedings at that Hearing can be found within the minutes of the meeting of the Standards Committee held on 16 May 2024. A copy of which can be found elsewhere within the agenda for this full Council meeting.)

There was an expectation that all such Hearings would be held in public unless the relevant paragraph of Schedule 12A of the Local Government Act 1972 applied, however the public interest test had to be considered and therefore it would only be in exceptional circumstances that a hearing would be held in private. In deciding whether to hold the Hearing in public or in private, the Committee had had regard to the written advice given by the Monitoring Officer and to the representations made at the meeting by Mr. Ian Taylor, acting on behalf of Councillor Turner.

The Committee had formally decided to hold the Hearing in public and therefore the Investigator’s report and other related documents had been placed forthwith in the public domain through the physical placing of the report et cetera in the public gallery and the access to the same via the Council’s website.

Having considered and noted the contents of the Investigator’s report, the Committee had then conducted the Hearing in accordance with the Hearings Procedure as follows:-

- (i) Presentation by Mr. Kenyon of his report;
- (ii) Questions from Councillor Turner’s representatives to Mr. Kenyon;
- (iii) Questions from members of the Committee to Mr. Kenyon;
- (iv) Presentation of Councillor Turner’s case by his Representatives;
- (v) Questions from Mr. Kenyon to the Representatives of Councillor Turner;
- (vi) Questions from members of the Committee to the Representatives of Councillor Turner; and
- (vii) Summing up by Mr. Kenyon and Mr. Ian Taylor (on behalf of Councillor Turner).

The Independent Person (Sue Gallone) then had the opportunity to provide her views on this matter as to whether there had been a failure to comply with the Code of Conduct, which the Committee would take into account before it made its decision on the allegation.

Sue Gallone had made the following statement:-

“My views are on whether I consider there to have been a breach of the Code of Conduct. I’ve read all of the papers and I’ve listened very carefully to what we’ve heard here today. I’m very mindful that we’re talking here about the balance of probabilities and therefore I’ve given some attention to the weight of the evidence in front of us which are the statements from those at the meetings, the complaint itself, Councillor Turner’s account of these events, the small comment in the chat and the minutes of the meetings that have been available to the Investigator as well.

It seems to me that the events have taken place. Nobody really disagrees with that. It’s the extent and strength of feeling that’s at dispute here in my view. We’ve had representations that Councillor Turner is robust and passionate in his beliefs and he puts that over and that is understandable for a Councillor. The question I feel is how far have those comments gone, have they gone too far. In my view in going to those four alleged breaches of the Code, I would say that items 1 and 2 have been breached based on the behaviour at the meetings on the 5th June and 29th June.

On the 5th June there appears to have been a personal attack on the representative of the Environment Agency and the SIG themselves. On the 29th June there was certainly a verbal attack on the RNLi representative who was treated, as the witnesses have attested, disrespectfully.

I think that it is also important to take into account that both of those meetings were disrupted quite significantly in achieving their purpose. So in that way I do think that the Code of Conduct which requires Councillors to treat other Councillors with respect and also to treat other representatives and partner organisations with respect, has been breached in my view. I think that also leads to the fourth alleged breach namely bringing TDC into dispute and I do think that has done that by treating others without respect.

The third item, about failing to promote equalities in a discriminatory matter I found more difficult to form a view on. I have looked at the headline of the Code, which is about saying that discrimination is unfair treatment towards particular groups. I don’t see that in the accounts that we have of the meetings. I think those with protected characteristics haven’t been subject to unfair treatment but when you look at the LGA guidance notes and indeed Mr. Kenyon has drawn attention to these in his report’s conclusions, we also have to consider whether there were any comments, slurs, jokes, statements, questions or gestures that were derogatory or offensive to an individual’s or group’s characteristics and whether any of the comments promoted negative stereotypes relating to an individual’s or group’s characteristics and I think that the comments made could be seen in that particular light. I do believe these are very sensitive matters and as has been said Councillor Turner hasn’t been afraid to raise these matters the language and perhaps the setting has been clumsy here but I do think it hasn’t met the guidance about the Code of Conduct in that case.

So those are my views on the breach of the Code of Conduct for the Committee to consider.”

In response to a question raised by the Head of Democratic Services (Keith Simmons) as to whether she had a view on the matter of Councillor Turner acting ‘in capacity’, Sue Gallone informed the Committee that her view was that Councillor Turner had been acting ‘in capacity’.

The Committee had then been required to make a decision in the following terms:-

- (i) Councillor Turner had failed to comply with the Code of Conduct; or
- (ii) Councillor Turner had not failed to comply with the Code of Conduct.

The Committee had also been required to give detailed reasons for its decision. The full text of that decision is contained within the **Appendix** to this report.

Having decided that Councillor Turner had failed to comply with the Code of Conduct, the Committee had then considered any representations from the Investigator and/or councillor Turner as to the appropriate sanction, as set out in Section 8 of the Complaints Procedure, and based on relevance to the breach, being proportionate and necessary to promote and maintain high standards of conduct.

Section 8 set out the available sanctions as follows:-

- (1) *Publish its findings in respect of the Member's conduct on the Council's website;*
- (2) *Report its findings to Council for information;*
- (3) *Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;*
- (4) *Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;*
- (5) *Instruct the Monitoring Officer to arrange training for the Member;*
- (6) *Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed from all outside appointments to which he/she has been appointed or nominated by the authority;*
- (7) *Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the withdrawal of facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or*
- (8) *Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or Committee) the exclusion of the Member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.*

The Investigating Officer (Melvin Kenyon) had declined to make any representations as to the sanctions to be applied, as he had not felt that it would be appropriate to do so.

Ian Taylor, on behalf of Councillor Turner, requested that no further sanctions be imposed on Councillor Turner over and above those that he had already incurred i.e. the loss of his committee and outside body appointments and the loss of his Group membership.

The Independent Person (Sue Gallone) had then had the opportunity to provide her views on this matter as to the Sanction(s) to be applied (if any), which the Committee would take into account before it made its decision.

Sue Gallone had made the following statement:-

“My view on the sanctions are that it is necessary to publish the findings and to report the findings to Council in the interests of transparency and democracy. With regard to the Council appointments, I think the ongoing status of those is more a matter for the Party and Council rather than me to have a view and so I don’t have a particular view on that. In terms of training I don’t see the need for further standards training for the Code of Conduct. Councillor Turner has had plenty of training on that but I do wonder if there is some scope for some sort of one-to-one advisory session to reflect on this experience and how things might be done differently. But, I am applying experience from elsewhere here and I don’t know if that would be possible within this Council.

Likewise, on the outside appointments I don’t have a view on that. I think that’s for the Council and the Leader. The resource sanctions numbers seven and eight are I think too draconian to restrict access in that way. And although this is a serious finding I don’t think it’s of a nature where that is necessary. So those are my views for the Committee to consider. Thank you.”

The Committee had then deliberated as to what actions it wished to take, having regard to Section 8 of the Complaints Procedure. The Committee had also considered whether it wanted to make any specific recommendations to the Council with a view to promoting and maintaining high standards of conduct among Members.

Following such deliberations, the Committee had:-

“RESOLVED that the Committee’s formal decision as to the sanctions to be applied is as follows:-

“The Committee has considered the representations from the subject member and the views of the Independent Person. It also acknowledges that the Investigating Officer did not make representations on the sanctions.

It is the Committee’s considered view that the following sanctions should be applied in response to the finding of the breach of the Code of Conduct for Members, announced already:

- (1) Publish its findings in respect of the Member’s conduct on the Council’s website;*
- (2) Report its findings to Council for information;*
- (3) Instruct the Monitoring Officer to arrange training for the Member;*

The suggestion from the Independent Person for this style of training to be more of a 1:1 reflective session around learning from the complaint is one the Committee endorses.

In addition, the Committee finds that there should be an apology issued by the subject member to the Coastal SIG and to this Council recognising the finding of this Committee.

Further, while recognising that decisions around membership of Committees for a non-aligned Member (which the subject member currently is), is a matter for Full Council, the Committee considers that any decision to appoint the subject member to a Committee should be after the apologies requested have been issued and the training undertaken.

Likewise, while the decision of appointments to outside bodies is a matter for the Leader of the Council, the Committee considers that any decision to appoint the subject member to an outside body should be after the apologies requested have been issued and the training undertaken.

We hope that the apologies and training can both be expedited and therefore not delay the appointments referenced.

The Committee considered that there was a breach of Article 10 in applying the sanctions concerned. However, and accepting that political debate has a higher protection under Article 10, the consequential restriction on the subject member from the sanctions applied are ones which are justified by reason of the requirement of article 10 subparagraph 2.”

MONITORING OFFICER’S RECOMMENDATION TO FULL COUNCIL:-

That the contents of this report and its appendix be formally noted.

LISA HASTINGS
MONITORING OFFICER